

Bismarck

City Administration

May 21, 2015

Board of City Commissioners
Bismarck, ND

Dear Commissioners:

The Board of City Commissioners is scheduled to meet in regular session on May 26, 2015, at 5:15 p.m. in the Tom Baker Meeting Room, City/County Office Building, 221 North 5th Street, Bismarck, North Dakota.

Invocation will be presented by a Chaplain from the Bismarck Police Department.

Future City Commission meetings are scheduled as follows:

June 9 & 23, 2015

July 14 & 28, 2015

August 11 & 25, 2015

MEETING OF THE BOARD OF CITY COMMISSIONERS

1. Consider approval of minutes of the meeting on May 12, 2015.
2. CONSENT AGENDA
 - A. Consider approval of expenditures.
 - B. Consider personnel actions. *(See attached information)*
 - C. The Board of City Commissioners considered the renewal of the following site authorizations from July 1, 2015 to June 30, 2016. *(No attachments - Information on file with Bismarck City Administration Office)*
 - Amvets Post 9
 - Cystic Fibrosis Association of North Dakota
 - Fort Abraham Lincoln Foundation
 - Horse Race North Dakota
 - Matpac Wrestling Club Inc.
 - ND FFA Alumni Association
 - North Dakota Association for the Disabled, Inc.
 - North Dakota Chapters of Delta Waterfowl
 - North Star Lions Club
 - VFW Post #1326

- D. Consider request from Bismarck Burleigh Public Health to renew the agreement with the ND Department of Health Division of Disease Control to rent office space within the Public Health building. *(See attached information)*
- E. Consider request from the Bismarck Event Center to purchase an upgrade to their current point of sale system used at the Event Center in the food service areas. *(See attached information)*
- F. Consider the following requests from the Finance Department: *(See attached information)*
- Appointment of Keith Ulmer to replace Dennis Schlittenhardt on the Special Assessment Commission.
 - Approval of 1996 as the base year for TIF.
 - Approval of State Tax Commissioner's Contract.
 - Approval of Contract with Vanguard Appraisals, Inc.
- G. Consider request from Public Works Utility Operations Department for approval of a three year renewal of maintenance agreement with Butler Machinery for the Emergency Generator at Water Treatment Plant. *(See attached information)*
- H. Consider the following requests from Bismarck Police Department: *(See attached information)*
- Approval to apply for grant funding from the Department of Justice.
 - Approval to apply for a North Dakota Department of Health STOP Grant in collaboration with the Abused Adult Resource Center.
- I. Consider the following requests from the Engineering Department *(See attached information)*
- Approval of the sanitary sewer easement with Redland LLC.
 - Change order with Mariner Construction for Street Improvement District 14-469 for a design change.
- J. Consider the requests for Resolution Creating District and Ordering Preparation of the Preliminary Report, Resolution Approving Preliminary Report and Directing Preparation of Plans and Specifications, Resolution Approving Plans and Specifications, Resolution Declaring Petition for Improvements has been Received, and Authorization to Advertise and Received Bids for the following improvement districts: *(See attached information)*
- Street Improvement District 15-498 (new asphalt, curb and gutter, ADA ramps)
 - Street Improvement District 15-499 (new concrete pavement, curb and gutter, ADA ramps, sidewalk, storm sewer)
- K. Consider the requests for Resolution Creating District and Ordering Preparation of the Preliminary Report, Resolution Approving Preliminary Report and Directing Preparation of Plans and Specifications, Resolution Approving Plans and Specifications, and Authorization to Advertise and Received Bids for the following improvement districts: *(See attached information)*
- Sewer Improvement District 15-562 (installation of local storm sewer, detention ponds and storm water, lift station and appurtenances)
 - Sewer Improvement District 15-566 (installation of local storm sewer, detention ponds and appurtenances)

- L. Consider the following requests relating to Water Improvement District 15-327: (*See attached information*)
- Resolution Creating District and Ordering Preparation of the Preliminary Report
 - Resolution Approving Preliminary Report and Directing Preparation of Plans and Specifications
 - Resolution Approving Plans and Specifications
 - Authorization to Advertise and Receive Bids
- M. Consider introduction of and call for public hearing on the following: (*See attached information*)
- Ordinance 6128 relating to weapons.
 - Ordinance 6129 relating to urban renewal and downtown development.

REGULAR AGENDA

3. Consider request to receive Annual Report for the Mayor's Committee on Human Relations. (*No attachment*)
4. Consider request from City Emergency Manager to adopt the 2015 Bismarck Multi-Hazard Mitigation Plan by resolution. (*See attached information*)
5. PUBLIC HEARING and second reading on Ordinance 6120, a zoning ordinance text amendment relating to off-street parking, initiated by the city of Bismarck. (*See attached information*)
6. PUBLIC HEARING and second reading on Ordinance 6121, a zoning ordinance text amendment relating to Special Uses/Temporary Uses, initiated by the city of Bismarck. (*See attached information*)
7. PUBLIC HEARING and second reading on Ordinance 6122, a zoning ordinance text amendment relating to Special Uses/Drive-in/Drive-through Retail or Service Establishments, initiated by the city of Bismarck. (*See attached information*)
8. PUBLIC HEARING and second reading on Ordinance 6123, a zoning ordinance text amendment relating to CR-Commercial District, initiated by the city of Bismarck. (*See attached information*)
9. PUBLIC HEARING and second reading on Ordinance 6124 relating to the annexation of Lots 1-13, Block 2, Lots 2-7, Block 4, and Lots 1-4, Block 5, Eagle Crest Fourth Addition. (*See attached information*)
10. PUBLIC HEARING and second reading on Ordinance 6125 relating to the annexation of Lot 2, Block 1, and all of the Northern Sky Drive right-of-way adjacent to Lot 2, Block 1, Northern Sky Addition. (*See attached information*)
11. PUBLIC HEARING and second reading on Ordinance 6126 relating to the annexation of Tract 9 of Tracts 7 and 8 and Tract 10 of Tract 7 of Tract C of Zoller's Subdivision, initiated by the city of Bismarck. (*See attached information*)

12. PUBLIC HEARING and second reading on Ordinance 6127 relating to a zoning change for Metro Industrial Park Third Subdivision. *(See attached information)*
13. Consider the following requests relating to Street Improvement District 495: *(See attached information)*
 - Resolution Receiving Bids
 - PUBLIC HEARING on Resolution of Necessity
 - Resolution Awarding Contract for Construction
14. Consider the following requests relating to Street Improvement District 488: *(See attached information)*
 - Resolution Receiving Bids
 - Resolution Awarding Contract for Construction
15. Consider request of Rick and Lori Lee for designation of the purchase of a primary residential condominium in a previously approved Renaissance Zone project at 100 West Broadway Avenue as a Renaissance Zone project. The property is owned by Pine Properties and is legally described as Lots 1-24, Block 58, Original Plat. The Renaissance Zone Authority recommends approval. *(See attached information)*
16. Consider request of Canvasback, LLC, for assistance from the CORE Technical Assistance Bank grant program for the building at 416 North 6th Street. The property is owned by Canvasback, LLC, and is legally described as Lot 2 less the West 10 feet, Block 25, Northern Pacific Addition. The Renaissance Zone Authority recommends approval. *(See attached information)*
17. Consider the request from the Public Works Service Operations Department to receive and consider disposition of bids for sale of a 2010 Toro Mower from a sealed bid public sale. *(See attached information)*
18. Consider the following requests from the Bismarck Airport: *(See attached information)*
 - Receive and consider disposition of bids for Airport Security Services.
 - Approve an insurance consultant selection committee recommendation.
19. Consider the following requests from the Public Works Utility Operations Department: *(No attachment)*
 - Receive and consider disposition of bids for sale of city-owned lot at 717 N Mandan Street.
 - Receive and consider disposition of bids for Water Utility Project 2015-107.
20. Other Business. *(No attachment)*

Sincerely,



Keith J. Hunke
Assistant City Administrator
KJH/keh

CONSENT AGENDA

PERSONNEL ACTIONS FOR THE MEETING ON May 26, 2015

Full-Time and Part-Time Appointments

Bergman, Thomas Police Officer	Police	Probationary appointment @ \$20.99/hr. 6/1/2015
Cavett, Cory Police Officer	Police	Probationary appointment @ \$20.99/hr. 6/1/2015
Cimarosti, Daniel Firefighter	Fire	Probationary appointment @ \$20.99/hr. 5/10/2015
Germain, Laura Office Assistant II	Police	Probationary appointment @ \$14.92/hr. 5/16/2015
Haswell, David Police Officer	Police	Probationary appointment @ \$20.99/hr. 5/21/2015
Hayden, Zachary Police Officer	Police	Probationary appointment @ \$20.99/hr. 6/1/2015
Huntington, Stephanie Dispatcher I	Communications	Probationary appointment @ \$17.27/hr. 6/1/2015
Markham, Gale Laborer	Public Works	Part time appointment @ \$12.60/hr. 6/8/2015
Miller, Michael Police Officer	Police	Probationary appointment @ \$20.99/hr. 5/21/2015
Miller, Sophie Architech/Engineering/Facility Intern	Public Works	Part time appointment @ \$15.60/hr. 5/26/2015
Peske, Timothy Laborer	Public Works	Part time appointment @ \$13.65/hr. 6/8/2015
Peterson, Joseph Police Officer	Police	Probationary appointment @ \$20.99/hr. 6/1/2015
Waterbury, Elliot Police Officer	Police	Probationary appointment @ \$20.99/hr. 6/1/2015
Weis, Kenneth Dispatcher I	Communications	Probationary appointment @ \$17.27/hr. 6/1/2015
Yantzer, Andrea Dispatcher I	Communications	Probationary appointment @ \$17.27/hr. 6/1/2015

Separations

Cysewski, Steve Police Lieutenant	Police	Retired. 6/17/2015
Goldade, Wilbert Equipment Operator I	Public Works	Retired. 5/21/2015
Mount, Kristopher Assistant Food & Beverage Manager	Event Center	Resigned. 5/15/2015
Murphy, Mitchel Firefighter	Fire	Resigned. 5/19/2015

Others

Bogers, Reid Firefighter	Fire	Salary adj. – completed Acting Fire Captain assignment. @ \$17.90/hr. 5/7/2015
Cimarosti, Daniel Firefighter	Fire	Salary adj. – begin 53 hr./wk. @ \$15.84/hr. 5/24/2015
Claypool, Meg Forestry – General Labor	Public Works	Salary adj. – 5/10/2015 @ \$12.60/hr.
Huber, Lori Community Health Nurse	Public Health	No longer resigning. Will remain Part Time. 4/30/2015
Jensen, Paul W/WW Maintenance Tech III	Public Works	Promoted & salary adj. @ \$26.37/hr. 5/10/2015
Kopp, Abby General Laborer	Public Works	Salary adj. – 5/10/2015 @ \$12.60/hr.
Lafferty, Cole Events Intern	Event Center	Salary adj. – 5/10/2015 @ \$9.50/hr.
McConnell, Jeff Fire Captain	Fire	Salary adj. – return to 53 hr. work week @ \$27.28/hr. 5/6/2015
Rieger, Steven Equipment Operator I	Public Works	Leave w/out pay. 10.7 hrs. 4/26 – 5/9/2015

Smith, Ashley
Dispatcher I

Communications

Leave w/out pay.
4/26 – 5/9/2015

Willis, Audra
Dispatcher I

Communications

Leave w/out pay.
4/26 – 5/9/2015

**No attachment
for Consent
Agenda Item
#2C**



Bismarck-Burleigh Public Health

TO: Mayor Seminary & Bismarck City Commissioners
FROM: Renae Moch, MBA, FACMPE, Director of Public Health
DATE: May 18, 2015
RE: Office Space – ND DOH Epidemiologist

Please consider the following agreement with the ND Department of Health Division of Disease Control. This contract renews the agreement for office space within the public health department for an Epidemiologist employed by the state health department.

This contract has been in place for several years, this is just a renewal allowing the state to continue renting the office space at the rate specified in the contract. Thank you for your consideration. I am available for questions if you have them.





CONTRACT REVIEW FORM

DEPARTMENT

Contract between the City of Bismarck and ND Department of Health

Purpose of Contract: Office space for epidemiologist at Public Health building

Contract Amount: \$ 2,227.20

Contract Period: 07/01/2015 thru 06/30/2017

Funding Source: ND Department of Health

Project Number: (If needed, send copy to Fiscal Services) N/A

Comments: This is to provide office space for the State Epidemiologist in the Public Health building for a 24 month period at \$92.80 per month.

After Mayor's Signature, route to: Nicole Williams Date: 04.20.15

Department Head Signature: Bernae Moch Date: 4-20-15

CITY ATTORNEY

Comments: OK

City Attorney Signature: Chris Date: 4-22-15

FINANCE

Comments: ok

Director of Finance Signature: Paul Beerna Date: 4-28-15

ADMINISTRATION

City Administrator Signature: [Signature] Date: 4/28/15

ATTENTION:

Attach a signature flag at each place you want the Mayor to sign.
Please send copy of completed contracts to Administration.

Print Form

LEASE

This lease is entered into by THE CITY OF BISMARCK, the owner of the premises described in Paragraph 1 (LANDLORD), and the State of North Dakota, North Dakota Department of Health (STATE).

1. SCOPE OF LEASE

The LANDLORD, in consideration of the rent to be paid and the covenants to be performed by STATE, hereby leases to STATE the following described premises situated in the City of Bismarck, county of Burleigh and state of North Dakota:

City of Bismarck
500 East Front Avenue
Bismarck, ND 58504

2. TERM OF LEASE

The term of this lease shall be for a period of 24 months, commencing on the 1st day of July 1, 2015, and terminating on the 30th day of June 2017.

3. RENTAL PAYMENTS

STATE will pay rent for the premises, consisting of 120 square feet, at \$9.28 per square foot per annum, or \$1,113.60 per annum. Rent will be paid in advance by the 10th day of each month in a monthly amount of \$92.80, which is 1/12 of the annual amount, commencing on the 1st day of July, 2015, and continuing monthly thereafter for the term of this lease. Rent shall be payable to the LANDLORD at City of Bismarck, P.O. Box 5503, Bismarck, North Dakota 58506-5503 unless the STATE is notified otherwise in writing by the LANDLORD.

4. LANDLORD'S OBLIGATIONS. For the term of this lease, and any extensions or renewals, LANDLORD agrees:

- a. To pay all water, sewer, heat, electricity, air conditioning and all other utility fees (except telephone) charged against the premises.
- b. To perform all required maintenance, including all janitorial services, which will be done on a daily basis, including furnishing of related supplies.
- c. To keep the walkways and parking areas of the premises free of accumulations of snow and to cut and care for the grass on the premises.
- d. That if other portions of the building are leased to other parties, LANDLORD shall not permit any activity to be conducted in other portions of the building or grounds

that will materially interfere with STATE's use and enjoyment of the leased premises.

- e. That STATE may install items which it deems necessary for maximum and optimum utilization of the leased premises. STATE may, at any time, remove from the premises all fixtures and other equipment owned by STATE; provided that the removal must be completed by termination of this lease or any renewal or extension. STATE agrees to repair any damages that may be done to the leased premises resulting from the removal of the items, if any.
- f. That STATE may place decorations, wall hangings, signs and directories upon entrance doors, in hallways leading to its leased premises, or doors and walls within the leased premises.
- g. To furnish 1 automobile parking stalls for use by STATE, its agents or designees, in the lot provided for use by the building tenants.
- h. To comply at its own expense with all federal, state, county, and city laws and ordinances and all lawful rules, regulations, or orders of any duly constituted authority, present or future, affecting the leased premises.
- i. To provide to STATE at the LANDLORD'S expense reasonable and standard premises and building security. Any additional, unusual, or unique security required by STATE due to STATE's use of leased premises, shall be at the STATE's sole expense. STATE may, at any time, remove from the premises all security fixtures and other security equipment owned by STATE; provided the removal is completed by termination of this lease or any renewal or extension. STATE agrees to repair any damages that may be done to the premises resulting from the removal of the security items, if any.
- j. To not enter leased premises designated by the STATE as "a limited access area" (or similar designation) except in an emergency, unless accompanied by a representative of the STATE agency occupying the premises, and to report to the STATE any emergency entry to a limited access area within 24 hours of its occurrence.

5. **STATE'S OBLIGATIONS.** For the term of this lease, and any renewals or extensions, STATE agrees:

- a. To pay the rent when due.
- b. To pay for its own telephone service.

- c. To keep the leased premises in reasonable condition the same as at the commencement of the term or as it may be put by the LANDLORD, except for reasonable use and wear, and damage by fire and unavoidable casualty.
- d. Not to make any unlawful, improper, or offensive use of the premises, and to observe all the laws of the state of North Dakota and the ordinances of the city of Bismarck in force from time to time relating to the leased premises.
- e. To permit the LANDLORD at all reasonable times to enter and examine the premises and to make necessary repairs for the protection of the premises.
- f. To surrender the leased premises to LANDLORD at the expiration of the term; and, in default of the payment of rent due or failure to perform its obligations under this lease, to surrender the premises upon demand made by LANDLORD.
- g. To maintain at its own expense and assume responsibility for all office equipment, furniture, and fixtures installed by STATE.

6. TERMINATION OF LEASE

It is expressly understood and agreed that STATE has no obligation under this lease for the initial or succeeding terms if the North Dakota Legislature fails to appropriate to STATE sufficient funds to defray the full rental costs. STATE, without any liability, may terminate this lease on thirty (30) days' written notice if its legislative appropriations are reduced or if its authority to spend its appropriations is reduced or limited by law or by reductions in federal or other grant funds to a point STATE, in its sole discretion, deems insufficient to pay the full rental cost for the remainder of the term of this lease. During the term of this lease or any renewal or extension, STATE may terminate this lease on thirty (30) days' written notice to the LANDLORD if the LANDLORD fails to comply with any of its obligations under this lease, or if STATE determines it must relocate to comply with the Americans With Disabilities Act of 1990 or any rules adopted under the act, or with any other state or federal law or rules. Notwithstanding any other provision in this lease, at any time during the initial or succeeding term or any extension, the STATE may terminate this lease without cause upon thirty (30) days written notice to LANDLORD without liability

7. TERMINATION OF LEASE IN THE EVENT OF DESTRUCTION OF PREMISES

If the leased premises are destroyed or damaged by fire or the elements to the extent they become untenable, then this lease shall immediately terminate, unless the LANDLORD, within twenty (20) days of the happening of the event, gives written notice of intention to restore the building and shall fully restore the premises within a reasonable time. During the term between destruction and restoration of the premises rent shall not be due.

8. HOLDING OVER

If STATE remains in possession of the premises after the lease expires, and the LANDLORD accepts rent from it, the lease shall be deemed renewed month to month.

9. MERGER

This lease is the entire agreement between the parties, and no modification of it shall be binding unless evidenced by written agreement signed by the parties.

10. SEVERABILITY

If any term or provision of this lease is declared by a court of competent jurisdiction to be invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the lease did not contain the particular term or provision held to be invalid.

11. ASSIGNMENT

This lease shall not be assigned or subleased by STATE unless the LANDLORD endorses its written consent to the assignment or sublease. This lease shall not terminate by reason of any sale of the premises by the LANDLORD to third parties, but shall continue throughout the entire term.

12. NOTICE

Whenever the term "written notice" or "in writing" is used in this lease, mailing of the notice shall be by certified mail sent to:

W. C. Wocken, City Administrator
City of Bismarck
PO Box 5503
Bismarck, ND 58506-5503

or

Arvy Smith, Deputy State Health Officer
North Dakota Department of Health
600 East Boulevard, Dept. 301
Bismarck, ND 58505-0200

13. APPLICABLE LAW

This lease shall be governed by and construed in accordance with the laws of the state of North Dakota.

14. SPOLIATION – NOTICE OF POTENTIAL CLAIMS

LANDLORD shall promptly notify STATE of all potential claims which arise from or result from this lease. LANDLORD shall also take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the STATE the opportunity to review and inspect the evidence, including the scene of an accident.

15. INSURANCE

Required Coverages. LANDLORD shall secure and keep in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, the following insurance coverages covering the LANDLORD for any and all claims of any nature arising out of this lease:

- a. Commercial general liability with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- b. Workers' compensation coverage meeting all statutory requirements.
- c. Property insurance insuring the full and true value of all LANDLORD's real and personal property located on or in the building in which the leased premises are located for all losses.

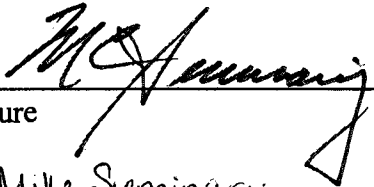
The insurance coverages listed above must meet the following additional requirements:

- a. Any deductible or self insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Landlord. The amount of any deductible or self retention is subject to approval by the State.
- b. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. The policies shall be in form and terms approved by the State. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.
- c. Landlord shall furnish to State a certificate of insurance evidencing the required coverages are in effect and providing that the coverages may not be canceled or modified without thirty (30) days prior written notice to State upon request of the State.
- d. Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

16. EFFECTIVENESS OF LEASE

This lease is not binding on STATE until it is reviewed by the Office of Attorney General and approved by the Facility Management Division, Office of Management and Budget, as required in N.D.C.C. § 54-21-24.1.

City of Bismarck


Signature

BY: Mike Seminary

ITS: President, Bismarck City Commission

DATE: April 28, 2015

STATE OF NORTH DAKOTA
Acting through its
Department of Health

Signature

BY: Arvy Smith

ITS: Deputy State Health Officer

DATE: _____

City of Bismarck


Signature

BY: W.C. Wocken

ITS: Bismarck City Administrator

DATE: April 28, 2015

FORM APPROVED BY ATTORNEY GENERAL:

BY: _____ DATE: _____

APPROVED BY FACILITY MANAGEMENT:

BY: _____ DATE: _____

MEMORANDUM

TO: Keith Hunke – Assistant City Administrator

FROM:  Charlie Jeske – General Manager Event Center

DATE: May 21, 2015

RE: Point of Sale upgrade to software within Food Service

Please place on the May 21, 2015 Commission agenda the request to purchase an upgrade to our current point of sale system used at the Bismarck Event Center in the food department. Since this is an upgrade to an existing system we are recommending to sole source this project.

Wayne Stoppler and Gordon Fode (City IT) have been included in discussions on this system so the needs for implementation on these upgrades presented are in proper order.

The quotation is broken down in two parts as follows:

Oracle	\$17,726.35 for upgrades to existing system
City IT	\$ 7,000.00 for server upgrades

Staff's recommendation is to approve the upgrades to our existing system with quotes of \$17,726.35 and \$7,000.00 for a total expenditure of \$24,726.35.

In the 2015 Budget there is a total of \$28,084 set aside to upgrade this equipment as an one-time expenditure.

I will be present at the City Commission meeting to respond to questions that the Board may have regarding this matter. Please contact me if you have questions or require additional information prior to the meeting.

CONTRACT REVIEW

DEPARTMENT BISMARCK EVENT CENTER

Contract between the City of Bismarck and ORACLE AMERICA, INC.

Purpose of Contract: UPGRADE MICROSOFT SOFTWARE 9700 4.0 UPGRADES

Contract Amount: \$ 17,726³⁵ (ORACLE) PLUS \$7,000⁰⁰ (CITY IT) TOTAL \$24,726³⁵

Contract Period: _____

Funding Source: 2015 ONE TIME BUDGET EXPENDITURES (\$28,084)

Project Number: (if applicable) _____


Comments: WORKING WITH CITY IT ON UPGRADES TO CURRENT SYSTEM

After Mayor's Signature, return to: CHARLIE DESKE

Department Signature:  5-21-15
Date

CITY ATTORNEY

Comments: OK

City Attorney Signature:  5-21-15
Date

FISCAL

Comments: OK w/ Commissioner Approval

Director of Finance Signature:  5-21-15
Date

APPROVAL

City Administrator Signature:  5/21/15
Date

Budgetary Quotation

Internal Sales Summary

WebQuote ID 2115121

Valid Through 30-JUN-15

Account Manager

Email Address chad.weiner@oracle.com

Phone Number

Customer Information

Company Bismarck Civic Ctr-Municipal Of City Of Bismarck c/o Bismarck Civic Center

Contact Gordon Fode

Address 315 S 5TH STREET,,BISMARCK,ND,58504,US

Email Address

Phone Number

All amounts in USD

Line #	Part #	Description	License Level	Quantity	Unit Selling Price	Support Selling Price	Net Fee	Support Duration	DDR Service	Support Net Price	Restriction Details
1.0	B80282	Oracle Hospitality Food and Beverage Point of Sale Implementation Services - per Hour		112	105.95	0	11,866.81	0 Year		0.00	
2.0	B80284	Oracle Hospitality Food and Beverage Live Support Service - per Hour		10	105.95	0	1,059.54	0 Year		0.00	
3.0	B80834	Oracle Hospitality Food and Beverage Estimated Travel and Expense		2	2,400.00		4,800.00	0 Year		0.00	

1 - 3

Net Fee Total: 17,726.35
 Support Net Fee Total: 0.00
Quote Total: 17,726.35 *

* Tax not included

Quote Description None

This pricing example is provided for evaluation purposes. This quote is intended to further our discussions, it is not eligible for acceptance by you and is not

a part of a binding subscription between us for the products and/or services specified. User minimums and licensing rules may apply to the products specified. If you would like to purchase the products and/or services specified in this draft quotation, please ask Oracle to issue you a formal Quote (which may include an Oracle Master Agreement if you do not already have an agreement with Oracle) for your acceptance and execution and return to Oracle. Your order will be effective only upon Oracle's acceptance of the formal Quote (and the Oracle Master Agreement, if required).

release 1.0

Consulting Services Breakdown

Prepared by: Chad Weiner
Prepared for: Gordon Fode
Site: Bismarck Civic Center
Project: 9700 4.0 Upgrade

Date Prepared: May 19, 2015

Scope of Project:

Activity	Capacity	# of ISR	# of Hours	Total Hours	Comments
9700 Server Staging	Lead	1	8	8	
9700 Application / Database Backup	Lead	1	8	8	
9700 4.0 Installation / Database Migration	Lead	1	16	16	
9700 Credit Card Setup/Programming/Training	Lead	1	16	16	
Web Reports Installation	Lead	1	8	8	
Web Reports Training	Lead	1	8	8	
Live Support (Lead)	Lead	1	24	24	
Remote - 9700 PI&EM Configuration	Lead	1	24	24	
Project Management	Project Manager	1	10	10	
Total				122	

CONTINGENCY BUDGET

Reasons for Contingency Budget Recommendation:

If there are unforeseen hardware issues or added programming requests outside of the scope of the project there will be additional PDT expense.

IMPORTANT Estimate Notes: Stadium & Arenas

- Quote is based on **concurrent LIVE** events. If there are gaps between Events, site will pay daily rate per person for 'dark' days
- Hardware placement to include placing of **workstations** & printers on counters & connecting them to existing **Certified Network**
- Network wiring certified by local Electrical Contractor based on Standard MICROS Site Prep Guide. Wireless POS networks must be properly setup and
- It is the sites **responsibility** to remove any and all legacy hardware prior to HW placement as well as removal of empty boxes from new **equipment**
- The customer will be pay for all expenses including, but not limited to: **transportation** to & from airport, food, lodging, laundry.
- If the scope of work is changed, the PDT may change. 30 days lead time is required for additional event support.
This will be handled on a **case-by-case** basis.
- Mobile MICROS POS clients require an additional day of programming to account for **Touchscreen** layouts if installed with traditional **workstations**

Estimate Notes:

- The customer will be responsible for all expenses including, not limited to airfare, transportation both to and from the airport, food, lodging and laundry.
- If the scope of work is changed the corresponding PDT may change. 30 Days lead time is required for additional event support. PDT scope change will be handled on a case by case basis.
- Live Support - Starting from one hour prior to the running of start of day and continuing for the next 10 consecutive hours, a MICROS representative will be available for LIVE support. This time period is inclusive of a one hour meal break. All other live support needed during hours of operation will be the responsibility of the customer.
- The Customer will be responsible for properly installing all networks, electrical and equipment mounting brackets as needed, prior to system installation. Network wiring must be certified by local Electrical Contractor based on Standard MICROS Site Prep Guide
- It is the sites responsibility to remove all legacy hardware prior to New HW placement as well as removal of empty boxes from new equipment

PDT* Scope Parameters:

With acceptance of this proposal said Property agrees to designate a POS implementation Project Manager (POS-PM) to be the primary point of contact for the MICROS Project Lead. The POS-PM will be responsible for effectively coordinating/communicating/compiling all project related information and needs to each of the properties affected departments.

- Property specific programming, up through system Go-Live, is based on detailed information provided by the property during the Site Survey.
- Requests for programming changes, post site survey, must be submitted in writing to the POS-PM for review, acceptance and prioritization. Approved changes will then be submitted to MICROS Project Manager for review... All programming modifications must adhere to accepted Standards, and be jointly agreed to by the POS-PM and MICROS' Project Lead. Prioritizations will be made based on their mission critical status, potential impact on the Go-Live timeline, additional training and Contingency PDT cost.
- Database Development – Any menus or operational changes submitted after the day of Database Review will be the responsibility of the local Property Experts, or may be submitted to the MICROS Programming Desk to be completed at a rate of \$200/hour with a 2 hour minimum and a 2-4 week lead time.

* If KDS is added with Menu Item Timing and Color Coded Alert Status, 1 additional day of PE Training will be added for programming.

Programming the Menu Item Timing and alerts is the sites responsibility.

** Non-Standard POS touchscreen sizes, mTablets & HandHelds, require an additional (1) day of programming to account for the differing Touchscreen layouts

Wireless POS networks must be properly setup and configured following a wireless site survey, prior to MICROS installing Handhelds

Cancellation Policy

PDT that is cancelled or postponed with less than 15 days written notice will be billed at the full PDT rate.

PDT cancelled with less than 30 days written notice will be billed at 50% of the PDT rate.



GENERAL TERMS

Oracle General Terms Reference:

(TO BE COMPLETED BY ORACLE)

These General Terms (these "General Terms") are between Oracle America, Inc. ("Oracle") and the individual or entity identified below in the signature block. To place orders subject to these General Terms, at least one Schedule (as defined below) must be incorporated into these General Terms. If a term is relevant only to a specific Schedule, that term will apply only to that Schedule if and/or when that Schedule is incorporated into these General Terms.

1. DEFINITIONS

1.1 "**Hardware**" refers to the computer equipment, including components, options and spare parts.

1.2 "**Integrated Software**" refers to any software or programmable code that is (a) embedded or integrated in the Hardware and enables the functionality of the Hardware or (b) specifically provided to You by Oracle under Schedule H and specifically listed (i) in accompanying documentation, (ii) on an Oracle webpage or (iii) via a mechanism that facilitates installation for use with Your Hardware. Integrated Software does not include and You do not have rights to (a) code or functionality for diagnostic, maintenance, repair or technical support services; or (b) separately licensed applications, operating systems, development tools, or system management software or other code that is separately licensed by Oracle. For specific Hardware, Integrated Software includes Integrated Software Options (as defined in Schedule H) separately ordered.

1.3 "**Master Agreement**" refers to these General Terms (including any amendments thereto) and all Schedule(s) incorporated into the Master Agreement (including any amendments to those incorporated Schedule(s)). The Master Agreement governs Your use of the Products and Service Offerings ordered from Oracle or an authorized reseller.

1.4 "**Operating System**" refers to the software that manages Hardware for Programs and other software.

1.5 "**Products**" refers to Programs, Hardware, Integrated Software and Operating System.

1.6 "**Programs**" refers to (a) the software owned or distributed by Oracle that You have ordered under Schedule P, (b) Program Documentation and (c) any Program updates acquired through technical support. Programs do not include Integrated Software or any Operating System or any software release prior to general availability (e.g., beta releases).

1.7 "**Program Documentation**" refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs. You may access the documentation online at <http://oracle.com/documentation>.

1.8 "**Schedule**" refers to all Oracle Schedules to these General Terms as identified in Section 2.

1.9 "**Separate Terms**" refers to separate license terms that are specified in the Program Documentation, readmes or notice files and that apply to Separately Licensed Third Party Technology.

1.10 "**Separately Licensed Third Party Technology**" refers to third party technology that is licensed under Separate Terms and not under the terms of the Master Agreement.

1.11 "**Service Offerings**" refers to technical support, education, hosted/outsourcing services, cloud services, consulting, advanced customer support services, or other services which You have ordered. Such Service Offerings are further described in the applicable Schedule.

1.12 "**You**" and "**Your**" refers to the individual or entity that has executed these General Terms.

2. MASTER AGREEMENT TERM AND APPLICABLE SCHEDULES

Orders may be placed under the Master Agreement for five years from the Effective Date (indicated below in Section 17). As of the Effective Date, the following Schedules are incorporated into the Master Agreement: Schedule H – Hardware, Schedule P – Program, and Schedule C – Cloud Services.

The Schedules set forth terms and conditions that apply specifically to certain types of Oracle offerings which may be different than, or in addition to, these General Terms.

3. SEGMENTATION

The purchase of any Products and related Service Offerings or other Service Offerings are all separate offers and separate from any other order for any Products and related Service Offerings or other Service Offerings You may receive or have received from Oracle. You understand that You may purchase any Products and related Service Offerings or other Service Offerings independently of any other Products or Service Offerings. Your obligation to pay for (a) any Products and related Service Offerings is not contingent on performance of any other Service Offerings or delivery of any other Products or (b) other Service Offerings is not contingent on delivery of any Products or performance of any additional/other Service Offerings. You acknowledge that You have entered into the purchase without reliance on any financing or leasing arrangement with Oracle or its affiliate.

4. OWNERSHIP

Oracle or its licensors retain all ownership and intellectual property rights to the Programs, Operating System, Integrated Software and anything developed or delivered under the Master Agreement.

5. INDEMNIFICATION

5.1 Subject to sections 5.5, 5.6 and 5.7 below, if a third party makes a claim against either You or Oracle ("Recipient" which may refer to You or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, data, hardware, or material (collectively, "Material") furnished by either You or Oracle ("Provider" which may refer to You or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- b. gives the Provider sole control of the defense and any settlement negotiations; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

5.2 If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid to the other party for it and, if Oracle is the Provider of an infringing Program, any unused, prepaid technical support fees You have paid to Oracle for the license of the infringing Program. If such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

5.3 Notwithstanding the provisions of section 5.2 and with respect to hardware only, if the Provider believes or it is determined that the hardware (or portion thereof) may have violated a third party's intellectual property rights, the Provider may choose to either replace or modify the hardware (or portion thereof) to be non-infringing (while substantially preserving its utility or functionality) or obtain a right to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may remove the applicable hardware (or portion thereof) and refund the net book value and, if Oracle is the Provider of infringing Hardware, any unused, prepaid technical support fees You have paid to Oracle for the Hardware.

5.4 In the event that the Material is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Material, Oracle may end the license for, and require return of, the Program associated with that Separately Licensed Third Party Technology and shall refund any Program license fees You may have paid to Oracle for the Program license and any unused, prepaid technical support fees You have paid to Oracle for the Program license.

5.5 Provided You are a current subscriber to Oracle technical support services for the Operating System (e.g., Oracle Premier Support for Systems, Oracle Premier Support for Operating Systems or Oracle Linux Premier Support), then for the period of time for which You were a subscriber to the applicable Oracle technical support services (a) the phrase "Material" above in section 5.1 shall include the Operating System and the Integrated Software and any Integrated Software Options that You have licensed and (b) the phrase "Program(s)" in this section 5 is replaced by the phrase "Program(s) or the Operating System or Integrated Software or Integrated Software Options (as applicable)" (i.e., Oracle will not indemnify You for Your use of the Operating System and/or Integrated Software and/or Integrated Software Options when You were not a subscriber to the applicable Oracle technical support services). Notwithstanding the foregoing, with respect solely to the Linux operating system, Oracle will not indemnify You for Materials that are not part of the Oracle Linux covered files as defined at <http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf>.

5.6 The Provider will not indemnify the Recipient if the Recipient alters Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Material which was provided to the Recipient, or if the Recipient continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Oracle will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or services not provided by Oracle. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use a Program and that is used: (a) in unmodified form; (b) as part of or as required to use a Program; and (c) in accordance with the license grant for the relevant Program and all other terms and conditions of the Master Agreement, Oracle will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for the Program under the terms of the Master Agreement. Oracle will not indemnify You for infringement caused by Your actions against any third party if the Program(s) as delivered to You and used in accordance with the terms of the Master Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time license rights are obtained.

5.7 This section provides the parties' exclusive remedy for any infringement claims or damages.

6. TERMINATION

6.1 If either of us breaches a material term of the Master Agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the Master Agreement. If Oracle terminates the Master Agreement as specified in the preceding sentence, You must pay within 30 days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Products ordered and/or Service Offerings received under the Master Agreement plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under the Master Agreement, You may not use those Products or Service Offerings ordered.

6.2 If You have used a contract with Oracle or an affiliate of Oracle to pay for the fees due under an order and You are in default under that contract, You may not use the Products and/or Service Offerings that are subject to such contract.

6.3 Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

7. FEES AND TAXES; PRICING, INVOICING AND PAYMENT OBLIGATION

7.1 All fees payable to Oracle are due within 30 days from the invoice date. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the Products and/or Service Offerings You ordered, except for taxes based on Oracle's income. Also, You will reimburse Oracle for reasonable expenses related to providing Service Offerings.

7.2 You understand that You may receive multiple invoices for the Products and Service Offerings You ordered. Invoices will be submitted to You pursuant to Oracle's Invoicing Standards Policy, which may be accessed at <http://oracle.com/contracts>.

8. NONDISCLOSURE

8.1 By virtue of the Master Agreement, the parties may have access to information that is confidential to one another ("**Confidential Information**"). We each agree to disclose only information that is required for the performance of obligations under the Master Agreement. Confidential Information shall be limited to the terms and pricing under the Master Agreement and all information clearly identified as confidential at the time of disclosure.

8.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

8.3 We each agree not to disclose each other's Confidential Information to any third party other than those set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under the Master Agreement. Nothing shall prevent either party from disclosing the terms or pricing under the Master Agreement or orders submitted under the Master Agreement in any legal proceeding arising from or in connection with the Master Agreement or disclosing the Confidential Information to a governmental entity as required by law.

9. ENTIRE AGREEMENT

9.1 You agree that the Master Agreement and the information which is incorporated into the Master Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, are the complete agreement for the Products and/or Service Offerings ordered by You and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Products and/or Service Offerings.

9.2 It is expressly agreed that the terms of the Master Agreement and any Oracle order shall supersede the terms in any purchase order, procurement internet portal or any other similar non-Oracle document and no terms included in any such purchase order, portal or other non-Oracle document shall apply to the Products and/or Service Offerings ordered. In the event of inconsistencies between the terms of any Schedule and these General Terms, the Schedule shall take precedence. In the event of any inconsistencies between the terms of an order and the Master Agreement, the order shall take precedence. The Master Agreement and orders may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of You and of Oracle. Any notice required under the Master Agreement shall be provided to the other party in writing.

10. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THE SCHEDULE GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PRODUCTS OR SERVICE OFFERINGS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT PRODUCT OR SERVICE OFFERINGS GIVING RISE TO THE LIABILITY.

11. EXPORT

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Products. You agree that such export laws govern Your use of the Products (including technical data) and any Service Offerings deliverables provided under the Master Agreement, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, Product and/or materials resulting from Service Offerings (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

12. FORCE MAJEURE

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Service Offerings and affected orders upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for Products and Service Offerings ordered or delivered.

13. GOVERNING LAW AND JURISDICTION

The Master Agreement is governed by the laws of the State of California and You and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of or relating to the Master Agreement.

14. NOTICE

If You have a dispute with Oracle or if You wish to provide a notice under the Indemnification section of these General Terms, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway Redwood Shores, CA 94065, Attention: General Counsel, Legal Department.

15. ASSIGNMENT

You may not assign the Master Agreement or give or transfer the Programs, Operating System, Integrated Software and/or any Service Offerings or an interest in them to another individual or entity. If You grant a security interest in the Programs, Operating System, Integrated Software and/or any Service Offerings deliverables, the secured party has no right to use or transfer the Programs, Operating System, Integrated Software and/or any Service Offerings deliverables, and if You decide to finance Your acquisition of any Products and/or any Service Offerings, You will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>. The foregoing shall not be construed to limit the rights You may otherwise have with respect to the Linux operating system, third party technology or Separately Licensed Third Party Technology licensed under open source or similar license terms.

16. OTHER

16.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.

16.2 If any term of the Master Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the Master Agreement.

16.3 Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to the Master Agreement may be brought by either party more than two years after the cause of action has accrued.

16.4 Products and Service Offerings deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Service Offerings deliverables in such applications.

16.5 If requested by an authorized reseller on Your behalf, You agree Oracle may provide a copy of the Master Agreement to the authorized reseller to enable the processing of Your order with that authorized reseller.

16.6 The Uniform Computer Information Transactions Act does not apply to the Master Agreement or orders placed under it. You understand that Oracle's business partners, including any third party firms retained by You to provide consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner unless (i) the business partner is providing services as an Oracle subcontractor in furtherance of an order placed under the Master Agreement and (ii) only to the same extent as Oracle would be responsible for the performance of Oracle resources under that order.

16.7 For software (i) that is part of Programs, Operating Systems, Integrated Software or Integrated Software Options (or all four) and (ii) that You receive from Oracle in binary form and (iii) that is licensed under an open source license that gives You the right to receive the source code for that binary, You may obtain a copy of the applicable source code from <https://oss.oracle.com/sources/> or <http://www.oracle.com/coto/opensourcecode>. If the source code for such software was not provided to You with the binary, You may also receive a copy of the source code on physical media by submitting a written request pursuant to the instructions in the "Written Offer for Source Code" section of the latter website.

16.8 Oracle may refer to You as an Oracle customer of the ordered Products and Service Offerings in sales presentations, marketing vehicles and activities.

17. MASTER AGREEMENT EFFECTIVE DATE

The Effective Date of the Master Agreement is _____. (DATE TO BE COMPLETED BY ORACLE)

<i>Bismarck Civic Ctr-Municipal Of City Of Bismarck</i>		Oracle America, Inc.	
Signature	_____	Signature	_____
Name	_____	Name	_____
Title	_____	Title	_____
Signature Date	_____	Signature Date	_____

Oracle America, Inc. ("Oracle")

500 Oracle Parkway

Redwood Shores, CA 94065

This Hardware Schedule (this "Schedule H") is a Schedule to the General Terms referenced above. The General Terms and this Schedule H, together with any other Schedules that reference the General Terms, are the Master Agreement. This Schedule H shall coterminate with the General Terms.

1. DEFINITIONS

1.1 "**Commencement Date**" for the Hardware, Operating System and Integrated Software refers to the date the Hardware is delivered. For Integrated Software Options, the Commencement Date refers to the date the Hardware is delivered or the effective date of the order if shipment of Hardware is not required.

1.2 "**Integrated Software Options**" refers to software or programmable code embedded in, installed on, or activated on the Hardware that requires one or more unit licenses that You must separately order and agree to pay additional fees. Not all Hardware contains Integrated Software Options; please refer to the Oracle Integrated Software Options License Definitions, Rules and Metrics accessible at <http://oracle.com/contracts> (the "Integrated Software Options License Rules") for the specific Integrated Software Options that may apply to specific Hardware. Oracle reserves the right to designate new software features as Integrated Software Options in subsequent releases and that designation will be specified in the applicable documentation and in the Integrated Software Options License Rules.

1.3 Capitalized terms used but not defined in this Schedule H have the meanings set forth in the General Terms.

2. RIGHTS GRANTED

2.1 Your Hardware order consists of the following items: Operating System (as defined in Your configuration), Integrated Software and all Hardware equipment (including components, options and spare parts) specified on the applicable order. Your Hardware order may also include Integrated Software Options. Integrated Software Options may not be activated or used until You separately order them and agree to pay additional fees.

2.2 You have the right to use the Operating System delivered with the Hardware subject to the terms of the license agreement(s) delivered with the Hardware. Current versions of the license agreements are located at <http://oracle.com/contracts>. You are licensed to use the Operating System and any Operating System updates acquired through technical support only as incorporated in, and as part of, the Hardware.

2.3 You have the limited, non-exclusive, royalty free, non-transferable, non-assignable right to use Integrated Software delivered with the Hardware subject to the terms of this Schedule H and the applicable documentation. You are licensed to use that Integrated Software and any Integrated Software updates acquired through technical support only as incorporated in, and as part of, the Hardware. You have the limited, non-exclusive, royalty free, non-transferable, non-assignable right to use Integrated Software Options that You separately order subject to the terms of this Schedule H, the applicable documentation and the Integrated Software Options License Rules; the Integrated Software Options License Rules are incorporated in and made a part of this Schedule H. You are licensed to use those Integrated Software Options and any Integrated

Software Options updates acquired through technical support only as incorporated in, and as part of, the Hardware. To fully understand Your license right to any Integrated Software Options that You separately order, You need to review the Integrated Software Options License Rules. In the event of any conflict between the Master Agreement and the Integrated Software Options License Rules, the Integrated Software Options License Rules shall take precedence.

2.4 The Operating System or Integrated Software or Integrated Software Options (or all three) may include separate works, identified in a readme file, notice file or the applicable documentation, which are licensed under open source or similar license terms; Your rights to use the Operating System, Integrated Software and Integrated Software Options under such terms are not restricted in any way by the Master Agreement including this Schedule H. The appropriate terms associated with such separate works can be found in the readme files, notice files or in the documentation accompanying the Operating System, Integrated Software, and Integrated Software Options.

2.5 Upon payment for Hardware-related Service Offerings, You have the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for Your internal business operations anything developed by Oracle and delivered to You under this Schedule H ("deliverables"); however, certain deliverables may be subject to additional license terms provided in the order.

3. RESTRICTIONS

3.1 You may only make copies of the Operating System, Integrated Software and Integrated Software Options for archival purposes, to replace a defective copy, or for program verification. You shall not remove any copyright notices or labels on the Operating System, Integrated Software or Integrated Software Options. You shall not decompile or reverse engineer (unless required by law for interoperability) the Operating System or Integrated Software.

3.2 You acknowledge that to operate certain Hardware, Your facility must meet a minimum set of requirements as described in the Hardware documentation. Such requirements may change from time to time, as communicated by Oracle to You in the applicable Hardware documentation.

3.3 The prohibition on the assignment or transfer of the Operating System or any interest in it under section 15 of the General Terms shall apply to all Operating Systems licensed under this Schedule H, except to the extent that such prohibition is rendered unenforceable under applicable law.

4. TRIAL PROGRAMS

Oracle may include additional Programs on the Hardware (e.g., Exadata Storage Server software). You are not authorized to use those Programs unless You have a license specifically granting You the right to do so; however, You may use those additional Programs for trial, non-production purposes for up to 30 days from the date of delivery provided that You may not use the trial Programs to provide or attend third party training on the content and/or functionality of the Programs. To use any of these Programs after the 30 day trial period, You must obtain a license for such Programs from Oracle or an authorized reseller. If You decide not to obtain a license for any Program after the 30 day trial period, You will cease using and promptly delete any such Programs from Your computer systems. Programs licensed for trial purposes are provided "as is" and Oracle does not provide technical support or offer any warranties for these Programs.

5. TECHNICAL SUPPORT

5.1 Oracle Hardware and Systems Support acquired with Your order may be renewed annually and, if You renew Oracle Hardware and Systems Support for the same systems and same configurations, for the first and second renewal years the technical support fee will not increase by more than 4% over the prior year's fees.

5.2 If ordered, Oracle Hardware and Systems Support (including first year and all subsequent years) is provided under Oracle's Hardware and Systems Support Policies in effect at the time the technical support services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information, and consents that Oracle may require in order to perform the technical support

services. The Oracle Hardware and Systems Support Policies are incorporated in this Schedule H and are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of technical support services provided during the period for which fees for Oracle Hardware and Systems Support have been paid. You should review the policies prior to entering into the order for technical support services. You may access the current version of the Oracle Hardware and Systems Support Policies at <http://oracle.com/contracts>.

5.3 Oracle Hardware and Systems Support is effective upon the Commencement Date of the Hardware or upon the effective date of the order if shipment of Hardware is not required.

6. HARDWARE-RELATED SERVICE OFFERINGS

In addition to technical support, You may order a limited number of Hardware-related Service Offerings under this Schedule H as listed in the Hardware-Related Service Offerings document, which is at <http://oracle.com/contracts>. You agree to provide Oracle with all information, access and full good faith cooperation reasonably necessary to enable Oracle to deliver these Service Offerings and You will perform the actions identified in the order as Your responsibility. If while performing these Service Offerings Oracle requires access to another vendor's products that are part of Your system, You will be responsible for acquiring all such products and the appropriate license rights necessary for Oracle to access such products on Your behalf. Service Offerings provided may be related to Your license to use Products owned or distributed by Oracle which You acquire under a separate order. The agreement referenced in that order shall govern Your use of such Products.

7. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

7.1 Oracle provides a limited warranty ("Oracle Hardware Warranty") for (i) the Hardware, (ii) the Operating System and the Integrated Software and the Integrated Software Options, and (iii) the Operating System media, the Integrated Software media and the Integrated Software Options media ("media", and (i), (ii) and (iii) collectively, "Hardware Items"). Oracle warrants that the Hardware will be free from, and using the Operating System and Integrated Software and Integrated Software Options will not cause in the Hardware, material defects in materials and workmanship for one year from the date the Hardware is delivered to You. Oracle warrants that the media will be free from material defects in materials and workmanship for a period of 90 days from the date the media is delivered to You. You may access a more detailed description of the Oracle Hardware Warranty at <http://www.oracle.com/us/support/policies/index.html> ("Warranty Web Page"). Any changes to the Oracle Hardware Warranty specified on the Warranty Web Page will not apply to Hardware or media ordered prior to such change. The Oracle Hardware Warranty applies only to Hardware and media that have been (1) manufactured by or for Oracle, and (2) sold by Oracle (either directly or by an Oracle-authorized distributor). The Hardware may be new or like new. The Oracle Hardware Warranty applies to Hardware that is new and Hardware that is like-new which has been remanufactured and certified for warranty by Oracle.

7.2 Oracle also warrants that technical support services and Hardware-related Service Offerings (as referenced in section 6 above) ordered and provided under this Schedule H will be provided in a professional manner consistent with industry standards. You must notify Oracle of any technical support service or Hardware-related Service Offerings warranty deficiencies within 90 days from performance of the deficient technical support service or Hardware-related Service Offerings.

7.3 FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (i) THE REPAIR OR, AT ORACLE'S OPTION AND EXPENSE, REPLACEMENT OF THE DEFECTIVE HARDWARE ITEM, OR IF SUCH REPAIR OR REPLACEMENT IS NOT REASONABLY ACHIEVABLE, THE REFUND OF THE FEES YOU PAID ORACLE FOR THE DEFECTIVE HARDWARE ITEM AND THE REFUND OF ANY UNUSED PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE DEFECTIVE HARDWARE ITEM; OR (ii) THE REPERFORMANCE OF THE DEFICIENT HARDWARE-RELATED SERVICE OFFERINGS; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER, YOU MAY END THE DEFICIENT HARDWARE-RELATED SERVICE OFFERINGS AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT HARDWARE-RELATED SERVICE OFFERINGS. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS WITH RESPECT TO THE ABOVE

ITEMS, INCLUDING ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.4 Replacement units for defective parts or Hardware Items replaced under the Oracle Hardware Warranty may be new or like new quality. Such replacement units assume the warranty status of the Hardware into which they are installed and have no separate or independent warranty of any kind. Title in all defective parts or Hardware Items shall transfer back to Oracle upon removal from the Hardware.

7.5 ORACLE DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE HARDWARE, OPERATING SYSTEM, INTEGRATED SOFTWARE, INTEGRATED SOFTWARE OPTIONS OR MEDIA.

7.6 No warranty will apply to any Hardware, Operating System, Integrated Software, Integrated Software Options or media which has been:

- a. modified, altered or adapted without Oracle's written consent (including modification or removal of the Oracle/Sun serial number tag on the Hardware);
- b. maltreated or used in a manner other than in accordance with the relevant documentation;
- c. repaired by any third party in a manner which fails to meet Oracle's quality standards;
- d. improperly installed by any party other than Oracle or an authorized Oracle certified installation partner;
- e. used with equipment or software not covered by an Oracle warranty, to the extent that the problems are attributable to such use;
- f. relocated, to the extent that problems are attributable to such relocation;
- g. used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
- h. used by parties appearing on the then-current U.S. export exclusion list;
- i. relocated to countries subject to U.S. trade embargo or restrictions;
- j. used remotely to facilitate any activities for parties or in the countries referenced in 7.6(h) and 7.6(i) above; or
- k. purchased from any entity other than Oracle or an Oracle authorized reseller.

7.7 The Oracle Hardware Warranty does not apply to normal wear of the Hardware or media. The Oracle Hardware Warranty is extended only to the original purchaser or original lessee of the Hardware and may be void in the event that title to the Hardware is transferred to a third party.

8. AUDIT

Upon 45 days written notice, Oracle may audit Your use of the Operating System, Integrated Software and Integrated Software Options. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to pay within 30 days of written notification any fees applicable to Your use of the Operating System, Integrated Software and Integrated Software Options in excess of Your license rights. If You do not pay, Oracle can end (a) Service Offerings (including technical support) related to the Operating System, Integrated Software and Integrated Software Options, (b) licenses of the Operating System,

Integrated Software and Integrated Software Options ordered under this Schedule H and related agreements and/or (c) the Master Agreement. You agree that Oracle shall not be responsible for any of Your costs incurred in cooperating with the audit.

9. ORDER LOGISTICS

9.1 Delivery, Installation and Acceptance of Hardware

9.1.1 You are responsible for installation of the Hardware unless You purchase installation services from Oracle for that Hardware.

9.1.2 Oracle will deliver the Hardware in accordance with Oracle's Order and Delivery Policies which are in effect at the time of Your order and which may be accessed at <http://oracle.com/contracts>. Oracle will use the delivery address specified by You on Your purchasing document or when Your purchasing document does not indicate a ship to address, the location specified on the order and the delivery terms in the Order and Delivery Policies that are applicable to Your country of destination will apply.

9.1.3 Acceptance of the Hardware is deemed to occur on delivery.

9.1.4 Oracle may make and invoice You for partial deliveries.

9.1.5 Oracle may make substitutions and modifications to the Hardware that do not cause a material adverse effect in overall Hardware performance.

9.1.6 Oracle will use its reasonable commercial efforts to deliver the Hardware within a timeframe that is consistent with Oracle's past practices regarding the amount and type of Hardware that You have ordered.

9.2 Delivery and Installation of Integrated Software Options

9.2.1 You are responsible for installation of the Integrated Software Options unless the Integrated Software Options have been pre-installed by Oracle on the Hardware You are purchasing under the order or unless You purchase installation services from Oracle for the Integrated Software Options.

9.2.2 Oracle has made available to You for electronic download at the electronic delivery web site located at the following Internet URL: <http://edelivery.oracle.com> the Integrated Software Options listed in the order. Through the Internet URL, You can access and electronically download to Your location the latest production release as of the effective date of the applicable order of the Integrated Software Options and related documentation for the Integrated Software Options listed. Provided that You have continuously maintained technical support for the listed Integrated Software Options, You may continue to download the Integrated Software Options and related documentation. Please be advised that not all Integrated Software Options are available on all Hardware/Operating System combinations. For the most recent Integrated Software Options availability please check the electronic delivery web site specified above. You acknowledge that Oracle is under no further delivery obligation with respect to Integrated Software Options under the applicable order, electronic download or otherwise.

9.3 Transfer of Title

Title to the Hardware will transfer upon delivery.

9.4 Territory

The Hardware shall be installed in the country/countries that You specify as the delivery location on Your purchasing document or when Your purchasing document does not indicate a ship to address, the location specified in the order.

9.5 Pricing, Invoicing, and Payment Obligation

9.5.1 You may change a Hardware order prior to shipment subject to the then current change order fee as established by Oracle from time to time. The applicable change order fees and a description of allowed

changes are defined in the Order and Delivery Policies, which may be accessed at <http://oracle.com/contracts>.

9.5.2 In entering into payment obligations under an order, You agree and acknowledge that You have not relied on the future availability of any Hardware, Program or updates. However, (a) if You order technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support under the Master Agreement, if and when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to You under an order and the Master Agreement.

9.5.3 Hardware and Integrated Software Options fees are invoiced as of the respective Commencement Dates.

9.5.4 Hardware-related Service Offering fees are invoiced in advance of the Hardware-related Service Offering performance; specifically, technical support fees are invoiced annually in advance. The period of performance for all Hardware-related Service Offerings is effective upon the Commencement Date of the Hardware or upon the effective date of the order if shipment of Hardware is not required.

9.5.5 In addition to the prices listed on the order, Oracle will invoice You for any applicable freight charges or applicable taxes, and You will be responsible for such charges and taxes notwithstanding any express or implied provision in the "Incoterms" referenced in the Order and Delivery Policies. The Order and Delivery Policies may be accessed at <http://oracle.com/contracts>.



Schedule P - Program

Oracle America, Inc. ("Oracle")

500 Oracle Parkway

Redwood Shores, CA 94065

This Program Schedule (this "Schedule P") is a Schedule to the General Terms referenced above. The General Terms and this Schedule P, together with any other Schedules that reference the General Terms, are the Master Agreement. This Schedule P shall coterminate with the General Terms.

1. DEFINITIONS

1.1 **"Commencement Date"** refers to the date of shipment of tangible media or the effective date of the order if shipment of tangible media is not required (if the order was placed through the Oracle store, the effective date is the date the order was submitted to Oracle).

1.2 Capitalized terms used but not defined in this Schedule P have the meanings set forth in the General Terms.

2. RIGHTS GRANTED

2.1 Upon Oracle's acceptance of Your order, You have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the order), limited right to use the Programs and receive any Program-related Service Offerings You ordered solely for Your internal business operations and subject to the terms of the Master Agreement, including the definitions and rules set forth in the order and the Program Documentation.

2.2 Upon payment for Program-related Service Offerings, You have the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for Your internal business operations anything developed by Oracle and delivered to You under this Schedule P ("deliverables"); however, certain deliverables may be subject to additional license terms provided in the order.

2.3 You may allow Your agents and contractors (including, without limitation, outsourcers) to use the Programs and deliverables for Your internal business operations and You are responsible for their compliance with the General Terms and this Schedule P in such use. For Programs that are specifically designed to allow Your customers and suppliers to interact with You in the furtherance of Your internal business operations, such use is allowed under the General Terms and this Schedule P.

2.4 You may make a sufficient number of copies of each Program for Your licensed use and one copy of each Program media.

3. RESTRICTIONS

3.1 The Programs may contain or require the use of third party technology that is provided with the Programs. Oracle may provide certain notices to You in Program Documentation, readmes or notice files in connection with such third party technology. Third party technology will be licensed to You either under the terms of the Master Agreement or, if specified in the Program Documentation, readmes or notice files, under Separate Terms. Your rights to use Separately Licensed Third Party Technology under Separate Terms are not

restricted in any way by the Master Agreement. However, for clarity, notwithstanding the existence of a notice, third party technology that is not Separately Licensed Third Party Technology shall be deemed part of the Programs and is licensed to You under the terms of the Master Agreement.

If You are permitted under an order to distribute the Programs, You must include with the distribution all such notices and any associated source code for Separately Licensed Third Party Technology as specified, in the form and to the extent such source code is provided by Oracle, and You must distribute Separately Licensed Third Party Technology under Separate Terms (in the form and to the extent Separate Terms are provided by Oracle). Notwithstanding the foregoing, Your rights to the Programs are solely limited to the rights granted in Your order.

3.2 You may not:

- a. remove or modify any Program markings or any notice of Oracle's or its licensors' proprietary rights;
- b. make the Programs or materials resulting from the Service Offerings available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Program license or materials from the Service Offerings You have acquired);
- c. cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the Programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by Programs);
- d. disclose results of any Program benchmark tests without Oracle's prior written consent.

3.3 The prohibition on the assignment or transfer of the Programs or any interest in them under section 15 of the General Terms shall apply to all Programs licensed under this Schedule P, except to the extent that such prohibition is rendered unenforceable under applicable law.

4. TRIAL PROGRAMS

You may order trial Programs, or Oracle may include additional Programs with Your order which You may use for trial, non-production purposes only. You may not use the trial Programs to provide or attend third party training on the content and/or functionality of the Programs. You have 30 days from the Commencement Date to evaluate these Programs. To use any of these Programs after the 30 day trial period, You must obtain a license for such Programs from Oracle or an authorized reseller. If You decide not to obtain a license for any Program after the 30 day trial period, You will cease using and promptly delete any such Programs from Your computer systems. Programs licensed for trial purposes are provided "as is" and Oracle does not provide technical support or offer any warranties for these Programs.

5. TECHNICAL SUPPORT

5.1 For purposes of an order, technical support consists of Oracle's annual technical support services You may have ordered from Oracle or an authorized reseller for the Programs. If ordered, annual technical support (including first year and all subsequent years) is provided under Oracle's technical support policies in effect at the time the technical support services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information and consents that Oracle may require in order to perform the technical support services. The technical support policies are incorporated in this Schedule P and are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of technical support services provided for supported Programs during the period for which fees for technical support have been paid. You should review the policies prior to entering into the order for the applicable technical support services. You may access the current version of the technical support policies at <http://oracle.com/contracts>.

5.2 Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS") acquired with Your order may be renewed annually and, if You renew SULS for the same number of licenses for the same Programs, for the first and second renewal years the fee for SULS will not increase by more than 4% over the prior year's fees. If Your order is fulfilled by an authorized reseller, the fee for SULS for the first renewal year will be the price quoted to You by Your authorized reseller; the fee for SULS for the second renewal year will not increase by more than 4% over the prior year's fees.

5.3 If You decide to purchase technical support for any Program license within a license set, You are required to purchase technical support at the same level for all licenses within that license set. You may desupport a subset of licenses in a license set only if You agree to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the technical support policies in effect at the time of termination. Oracle's license set definition is available in the current technical support policies. If You decide not to purchase technical support, You may not update any unsupported Program licenses with new versions of the Program.

6. PROGRAM-RELATED SERVICE OFFERINGS

In addition to technical support, You may order a limited number of Program-related Service Offerings under this Schedule P as listed in the Program-Related Service Offerings document, which is at <http://oracle.com/contracts>. You agree to provide Oracle with all information, access and full good faith cooperation reasonably necessary to enable Oracle to deliver these Service Offerings and You will perform the actions identified in the order as Your responsibility. If while performing these Service Offerings Oracle requires access to another vendor's products that are part of Your system, You will be responsible for acquiring all such products and the appropriate license rights necessary for Oracle to access such products on Your behalf. Service Offerings provided may be related to Your license to use Programs owned or distributed by Oracle which You acquire under a separate order. The agreement referenced in that order shall govern Your use of such Programs.

7. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

7.1 Oracle warrants that a Program licensed to You will operate in all material respects as described in the applicable Program Documentation for a period of one year after delivery (i.e., via physical shipment or electronic download). You must notify Oracle of any Program warranty deficiency within one year after delivery. Oracle also warrants that technical support services and Program-related Service Offerings (as referenced in section 6 above) ordered and provided under this Schedule P will be provided in a professional manner consistent with industry standards. You must notify Oracle of any technical support service or Program-related Service Offerings warranty deficiencies within 90 days from performance of the deficient technical support service or Program-related Service Offerings.

7.2 ORACLE DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT ORACLE WILL CORRECT ALL PROGRAM ERRORS.

7.3 FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE ERRORS OF THE APPLICABLE PROGRAM LICENSE IN A COMMERCIALY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS.

7.4 TO THE EXTENT NOT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. AUDIT

Upon 45 days written notice, Oracle may audit Your use of the Programs. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to pay within 30 days of written notification any fees applicable to Your use of the Programs in excess of Your license rights. If You do not pay, Oracle can end (a) Program-related Service Offerings (including technical support), (b) Program licenses ordered under this Schedule P and related agreements and/or (c) the Master Agreement. You agree that Oracle shall not be responsible for any of Your costs incurred in cooperating with the audit.

9. ORDER LOGISTICS

9.1 Delivery and Installation

9.1.1 You are responsible for installation of the Programs unless the Programs have been pre-installed by Oracle on the Hardware You are purchasing under the order or unless You purchase installation services from Oracle for those Programs.

9.1.2 Oracle has made available to You for electronic download at the electronic delivery web site located at the following Internet URL: <http://edelivery.oracle.com> the Programs listed in the Programs and Program Support Service Offerings section of the applicable order. Through the Internet URL, You can access and electronically download to Your location the latest production release as of the effective date of the applicable order of the software and related Program Documentation for each Program listed. Provided that You have continuously maintained technical support for the listed Programs, You may continue to download the Programs and related Program Documentation. Please be advised that not all Programs are available on all hardware/operating system combinations. For the most recent Program availability please check the electronic delivery web site specified above. You acknowledge that Oracle is under no further delivery obligation with respect to Programs under the applicable order, electronic download or otherwise.

9.1.3 If ordered, Oracle will deliver the tangible media to the delivery address specified on the applicable order. You agree to pay applicable media and shipping charges. The applicable shipping terms for the delivery of tangible media are: FCA Shipping Point, Prepaid, and Add.

9.2 Territory

The Programs shall be used in the country/countries specified in the order.

9.3 Pricing, Invoicing and Payment Obligation

9.3.1 In entering into payment obligations under an order, You agree and acknowledge that You have not relied on the future availability of any Program or updates. However, (a) if You order technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support under the Master Agreement, if and when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to You under an order and the Master Agreement.

9.3.2 Program fees are invoiced as of the Commencement Date.

9.3.3 Program-related Service Offering fees are invoiced in advance of the Program-related Service Offering performance; specifically, technical support fees are invoiced annually in advance. The period of performance for all Program-related Service Offerings is effective upon the Commencement Date.

9.3.4 In addition to the prices listed on the order, Oracle will invoice You for any applicable shipping charges or applicable taxes and You will be responsible for such charges and taxes.



Schedule C – Cloud Services

Oracle America, Inc. ("Oracle")

500 Oracle Parkway

Redwood Shores, CA 94065

This Cloud Services Schedule (this "Schedule C") is a Schedule to the General Terms referenced above. This Schedule C shall coterminate with the General Terms. For purposes of the Services under this Schedule C, the General Terms and this Schedule C constitute, collectively, the "Master Agreement"; other Schedules to the General Terms, such as Schedule P (Program Schedule), do not apply to the Services ordered under this Schedule C.

1. DEFINITIONS

1.1 "**Ancillary Software**" means any software agent or tool that Oracle makes available to You for download for purposes of facilitating Your access to, operation of, and/or use with, the Services Environment.

1.2 "**Auto Renew**" or "**Auto Renewal**" is the process by which the Services Period of certain Cloud Services under an order is automatically extended for an additional Services Period unless such Services are otherwise terminated in accordance with the terms of the order or this Master Agreement. The Service Specifications incorporated into Your order define which Cloud Services are eligible for Auto Renewal as well as any terms applicable to any such renewal.

1.3 "**Cloud Services**" means, collectively, the Oracle cloud services (e.g., Oracle software as a service offerings and related Oracle Programs) listed in Your order and defined in the Service Specifications. The term "Cloud Services" does not include Professional Services.

1.4 "**Data Center Region**" refers to the geographic region in which the Services Environment is physically located. The Data Center Region applicable to the Cloud Services is set forth in Your order.

1.5 "**Oracle Programs**" refers to the software products owned or licensed by Oracle to which Oracle grants You access as part of the Cloud Services, including Program Documentation, and any program updates provided as part of the Cloud Services.

1.6 "**Professional Services**" means, collectively, the Cloud Services-related consulting and other professional services which You have ordered under this Schedule C. Professional Services include any deliverables described in Your order and delivered by Oracle to You under the order. The term "Professional Services" does not include Cloud Services or services provided under Schedules P or S to the General Terms.

1.7 "**Program Documentation**" refers to the user manuals referenced within the Service Specifications for Cloud Services, as well as any help windows and readme files for the Oracle Programs that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the Oracle Programs. For Oracle Infrastructure-as-a-Service (IaaS) Cloud Services, "Program Documentation" includes documentation, help windows and readme files for the IaaS hardware products. You may access the documentation online at <http://oracle.com/contracts> or such other address specified by Oracle.

1.8 "**Services**" means, collectively, the Cloud Services and Professional Services ordered by You under this Schedule C.

1.9 "**Services Environment**" refers to the combination of hardware and software components owned, licensed or managed by Oracle to which Oracle grants You and Your Users access as part of the Cloud Services which You have ordered. As applicable and subject to the terms of this Master Agreement and Your order, Oracle Programs, Third Party Content, Your Content and Your Applications may be hosted in the Services Environment.

1.10 **"Service Specifications"** means the descriptions on www.oracle.com/contracts, or such other address specified by Oracle, that are applicable to the Services under Your order, including any Program Documentation, hosting, support and security policies (for example, Oracle Cloud Hosting and Delivery Policies), and other descriptions referenced or incorporated in such descriptions or Your order.

1.11 **"Services Period"** refers to the period of time for which You have ordered Cloud Services as specified in Your order.

1.12 **"Third Party Content"** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Oracle and made available to You through, within, or in conjunction with Your use of, the Cloud Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, and data libraries and dictionaries and marketing data.

1.13 **"Users"** means those employees, contractors, and end users, as applicable, authorized by You or on Your behalf to use the Cloud Services in accordance with this Master Agreement and Your order. For Cloud Services that are specifically designed to allow Your clients, agents, customers, suppliers or other third parties to access the Cloud Services to interact with You, such third parties will be considered "Users" subject to the terms of this Master Agreement and Your order.

1.14 **"Your Applications"** means all software programs, including any source code for such programs, that You or Your Users provide and load onto, or create using, any Oracle "platform-as-a-service" or "infrastructure-as-a-service" Cloud Services. Services under this Master Agreement, including Oracle Programs and Services Environments, Oracle intellectual property, and all derivative works thereof, do not fall within the meaning of the term "Your Applications."

1.15 **"Your Content"** means all text, files, images, graphics, illustrations, information, data (including Personal Data as that term is defined in the Data Processing Agreement for Oracle Cloud Services described in Section 10.2 below), audio, video, photographs and other content and material (other than Your Applications), in any format, provided by You or on behalf of Your Users that reside in, or run on or through, the Services Environment.

1.16 Capitalized terms used but not defined in this Schedule C have the meanings set forth in the General Terms.

2. RIGHTS GRANTED

2.1 For the duration of the Services Period and subject to Your payment obligations, and except as otherwise set forth in this Master Agreement or Your order, You have the non-exclusive, non-assignable, worldwide, limited right to access and use the Services that You ordered, including anything developed by Oracle and delivered to You as part of the Services, solely for Your internal business operations and subject to the terms of this Master Agreement and Your order, including the Service Specifications. You may allow Your Users to use the Services for this purpose and You are responsible for Your Users' compliance with this Master Agreement and the order.

2.2 You do not acquire under this Master Agreement any right or license to use the Services, including the Oracle Programs and Services Environment, in excess of the scope and/or duration of the Services stated in Your order. Upon the end of the Services ordered, Your right to access and use the Services will terminate.

2.3 To enable Oracle to provide You and Your Users with the Services, You grant Oracle the right to use, process and transmit, in accordance with this Master Agreement and Your order, Your Content and Your Applications for the duration of the Services Period plus any additional post-termination period during which Oracle provides You with access to retrieve an export file of Your Content and Your Applications. If Your Applications include third party programs, You acknowledge that Oracle may allow providers of those third party programs to access the Services Environment, including Your Content and Your Applications, as required for the interoperation of such third party programs with the Services. Oracle will not be responsible for any use, disclosure, modification or deletion of Your Content or Your Applications resulting from any such access by third party program providers or for the interoperability of such third party programs with the Services.

2.4 Except as otherwise expressly set forth in Your order for certain Cloud Services offerings (e.g., a private cloud hosted at Your facility), You acknowledge that Oracle has no delivery obligation for Oracle Programs and will not ship copies of such programs to You as part of the Services.

2.5 As part of certain Cloud Services offerings, Oracle may provide You with access to Third Party Content. The type and scope of any Third Party Content is defined in Your order or applicable Service Specifications. The third party

owner, author or provider of such Third Party Content retains all ownership and intellectual property rights in and to that content, and Your rights to use such Third Party Content are subject to, and governed by, the terms applicable to such content as specified by such third party owner, author or provider, unless otherwise specified in Your order.

3. OWNERSHIP AND RESTRICTIONS

3.1 You retain all ownership and intellectual property rights in and to Your Content and Your Applications. Oracle or its licensors retain all ownership and intellectual property rights to the Services, including Oracle Programs and Ancillary Software, and derivative works thereof, and to anything developed or delivered by or on behalf of Oracle under this Master Agreement.

3.2 You may not, and may not cause or permit others to:

- a. remove or modify any program markings or any notice of Oracle's or its licensors' proprietary rights;
- b. make the programs or materials resulting from the Services (excluding Your Content and Your Applications) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services You have acquired);
- c. modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, distribute, republish or download any part of the Services (the foregoing prohibitions include but are not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to Oracle;
- d. perform or disclose any benchmark or performance tests of the Services, including the Oracle Programs;
- e. perform or disclose any of the following security testing of the Services Environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- f. license, sell, rent, lease, transfer, assign, distribute, host, outsource, permit timesharing or service bureau use, or otherwise commercially exploit or make available the Services, Oracle Programs, Ancillary Software, Services Environments or Oracle materials to any third party, other than as expressly permitted under the terms of the applicable order.

4. SERVICE SPECIFICATIONS

4.1 The Services are subject to and governed by Service Specifications applicable to Your order. Service Specifications may define provisioning and management processes applicable to the Services (such as capacity planning), types and quantities of system resources (such as storage allotments), functional and technical aspects of the Oracle Programs, as well as any Services deliverables. You acknowledge that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance and/or may result in additional fees. If the Services permit You to exceed the ordered quantity (e.g., soft limits on counts for Users, sessions, storage, etc.), then You are responsible for promptly purchasing additional quantity to account for Your excess usage. For any month that You do not promptly purchase such additional quantity, Oracle may require You to pay, in addition to the fees for the additional quantity, an excess usage fee for those Services equivalent to 10% of the fees for the additional quantity in the month in which such excess usage occurred.

4.2 Oracle may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Services Period, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Specifications are subject to change at Oracle's discretion; however, Oracle changes to the Service Specifications will not result in a material reduction in the level of performance, security or availability of the applicable Services provided to You for the duration of the Services Period.

4.3 Your order will specify the Data Center Region in which Your Services Environment will reside. As described in the Service Specifications and to the extent applicable to the Cloud Services that You have ordered, Oracle will provide production, test, and backup environments in the Data Center Region stated in Your order. Oracle and its affiliates may perform certain aspects of Cloud Services, such as service administration and support, as well as other Services (including Professional Services and disaster recovery), from locations and/or through use of subcontractors, worldwide.

5. USE OF THE SERVICES

5.1 You are responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Your and Your Users' usernames, passwords and accounts with Oracle, You accept responsibility for the confidentiality and timely and proper termination of user records in Your local (intranet) identity infrastructure or on Your local computers. Oracle is not responsible for any harm caused by Your Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Your local identity management infrastructure or Your local computers. You are responsible for all activities that occur under Your and Your Users' usernames, passwords or accounts or as a result of Your or Your Users' access to the Services, and agree to notify Oracle immediately of any unauthorized use. You agree to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

5.2 You shall not use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Your Content, Your Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Oracle under this Master Agreement, Oracle reserves the right, but has no obligation, to take remedial action if any material violates the restrictions in the foregoing sentence (the "Acceptable Use Policy"), including the removal or disablement of access to such material. Oracle shall have no liability to You in the event that Oracle takes such action. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Your Content and Your Applications. You agree to defend and indemnify Oracle against any claim arising out of a violation of Your obligations under this section.

5.3 You are required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, including for the Oracle Programs, as such Patches are generally released by Oracle as described in the Service Specifications. Oracle is not responsible for performance or security issues encountered with the Cloud Services that result from Your failure to accept the application of Patches that are necessary for the proper function and security of the Services. Except for emergency or security related maintenance activities, Oracle will coordinate with You the scheduling of application of Patches, where possible, based on Oracle's next available standard maintenance window.

6. TRIAL USE AND PILOT CLOUD SERVICES

6.1 For certain Cloud Services, Oracle may make available "trials" and "conference room pilots" for non-production evaluation purposes. Cloud trials and conference room pilots must be ordered under a separate agreement.

6.2 Oracle may make available "production pilots" for certain Cloud Services under this Master Agreement. Production pilots ordered by You are described in the Service Specifications applicable to Your order, and are provided solely for You to evaluate and test Cloud Services for Your internal business purposes. You may be required to order certain Professional Services as a prerequisite to an order for a production pilot.

7. FEES, INVOICING AND PAYMENT OBLIGATION

7.1 You agree and acknowledge that You have not relied on the future availability of any Services, programs or updates in entering into the payment obligations in Your order; however, the preceding does not relieve Oracle of its obligation during the Services Period to deliver Services that You have ordered per the terms of this Master Agreement.

7.2 Services fees are invoiced as set forth in the applicable order. Once placed, Your order is non-cancelable and the sums paid nonrefundable, except as provided in this Master Agreement or Your order.

7.3 Fees for Services listed in an order are exclusive of taxes and expenses and You will be responsible for such taxes and expenses.

8. SERVICES PERIOD; END OF SERVICES

8.1 Services provided under this Master Agreement shall be provided for the Services Period defined in Your order, unless earlier suspended or terminated in accordance with this Master Agreement or the order. This Master Agreement will continue to govern any order for the duration of the Services Period of such order. If stated in the Service

Specifications, certain Cloud Services that are ordered will Auto Renew for additional Services Periods unless (i) You provide Oracle with written notice no later than thirty (30) days prior to the end of the applicable Services Period of Your intention not to renew such Cloud Services, or (ii) Oracle provides You with written notice no later than ninety (90) days prior to the end of the applicable Services Period of its intention not to renew such Cloud Services.

8.2 Upon the end of the Services, You no longer have rights to access or use the Services, including the associated Oracle Programs and Services Environments; however, for a period of up to 60 days after the end of the applicable Services Period, Oracle will make available Your Content and Your Applications then in the Services Environment for the purpose of retrieval by You. At the end of such 60 day period, and except as may be required by law, Oracle will delete or otherwise render inaccessible any of Your Content and Your Applications that remain in the Services Environment.

8.3 Oracle may temporarily suspend Your password, account, and access to or use of the Services if You or Your Users violate any provision within the 'Rights Granted', 'Ownership and Restrictions', 'Fees and Taxes', 'Use of the Services', or 'Export' sections of this Master Agreement, or if in Oracle's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. Oracle will provide advance notice to You of any such suspension in Oracle's reasonable discretion based on the nature of the circumstances giving rise to the suspension. Oracle will use reasonable efforts to re-establish the affected Services promptly after Oracle determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, Oracle will make available to You Your Content and Your Applications as existing in the Services Environment on the date of suspension. Oracle may terminate the Services under an order if any of the foregoing causes of suspension is not cured within 30 days after Oracle's initial notice thereof. Any suspension or termination by Oracle under this paragraph shall not excuse You from Your obligation to make payment(s) under this Master Agreement.

8.4 If You breach a material term of the Master Agreement as specified in Section 6.1 of the General Terms, Oracle may terminate the order under which the breach occurred; in such event You must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services ordered under such order plus related taxes and expenses.

9. NONDISCLOSURE OF YOUR CONTENT AND YOUR APPLICATIONS

Your Content and Your Applications residing in the Services Environment will be considered Confidential Information subject to the terms of this section and Section 8 of the General Terms. Oracle will hold such Confidential Information in confidence for as long as it resides in the Services Environment and will protect the confidentiality of such Confidential Information in accordance with the Oracle security practices defined in the Service Specifications applicable to Your order. In addition, Your Personal Data, as defined in the Data Processing Agreement, will be treated in accordance with the terms of Section 10 below.

10. DATA PROTECTION

10.1 In performing the Services, Oracle will comply with the *Oracle Services Privacy Policy*, which is available at <http://www.oracle.com/html/Services-privacy-policy.html> and incorporated herein by reference. The *Oracle Services Privacy Policy* is subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of protection provided for Your Personal Data provided as part of Your Content during the Services Period of Your order.

10.2 Oracle's *Data Processing Agreement for Oracle Cloud Services* (the "Data Processing Agreement"), which is available at <http://www.oracle.com/dataprocessingagreement> and incorporated herein by reference, describes the parties' respective roles for the processing and control of Personal Data that You provide to Oracle as part of the Cloud Services. Oracle will act as a data processor, and will act on Your instruction concerning the treatment of Your Personal Data residing in the Services Environment, as specified in this Master Agreement, the Data Processing Agreement and the applicable order. You agree to provide any notices and obtain any consents related to Your use of the Services and Oracle's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

10.3 The Service Specifications applicable to Your order define the administrative, physical, technical and other safeguards applied to Your Content residing in the Services Environment, and describe other aspects of system management applicable to the Services. You are responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content and Your Applications, including any viruses, Trojan horses, worms or other programming routines contained in Your Content or Your Applications that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data. You may disclose or transfer, or instruct Oracle to

disclose or transfer, Your Content or Your Applications to a third party, and upon such disclosure or transfer Oracle is no longer responsible for the security or confidentiality of such content and applications outside of Oracle.

10.4 You may not provide Oracle access to health, payment card or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless specified in Your order. If available, You may purchase services from Oracle (e.g., Oracle Payment Card Industry Compliance Services, Oracle HIPAA Security Services, Oracle Federal Security Services, etc.) designed to address particular data protection requirements applicable to Your business or Your Content.

11. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

11.1 Oracle warrants that it will perform (i) Cloud Services in all material respects as described in the Service Specifications, and (ii) Professional Services in a professional manner in accordance with the Service Specifications. If the Services provided to You were not performed as warranted, You must promptly provide written notice to Oracle that describes the deficiency in the Services (including, as applicable, the service request number notifying Oracle of the deficiency in the Services).

11.2 ORACLE DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT ORACLE WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY ORACLE, AND (C) THE SERVICES WILL MEET YOUR REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT ORACLE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ORACLE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT, YOUR APPLICATIONS OR THIRD PARTY CONTENT.

11.3 FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND ORACLE WILL REFUND TO YOU THE FEES FOR THE TERMINATED SERVICES THAT YOU PRE-PAID TO ORACLE FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

11.4 TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS MASTER AGREEMENT), DATA, OR DATA USE. ORACLE'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS MASTER AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNTS ACTUALLY PAID TO ORACLE FOR THE SERVICES UNDER THE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY LESS ANY REFUNDS OR CREDITS RECEIVED BY YOU FROM ORACLE UNDER SUCH ORDER.

13. ADDITIONAL INFRINGEMENT INDEMNIFICATION TERMS

13.1 If Oracle is the Provider and exercises its option under Section 5.2 of the General Terms to end the license for and require the return of a Material that is a component of the Cloud Services, including an Oracle Program, then Oracle will refund any unused, prepaid fees that You have paid for such Material. If such Material is third party technology and the terms of the third party license do not allow Oracle to terminate the license, then Oracle may, upon 30 days prior written notice, end the Services associated with such Material and refund to You any unused, prepaid fees for such Services.

13.2 Oracle will not indemnify You to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible or made available to You within or by the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.). Oracle will not indemnify You for infringement caused by Your actions against any third party if the Services as delivered to You and used in accordance with the terms of this Master Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time Services rights are obtained.

13.3 The phrase “user documentation” in the first sentence of Section 5.6 of the General Terms includes the Service Specifications referenced in Your order for Services.

14. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES

14.1 The Services may enable You to link to, transmit Your Content to, or otherwise access, other Web sites, platforms, content, products, services, and information of third parties. Oracle does not control and is not responsible for such Web sites or platforms or any such content, products, services and information accessible from or provided through the Services, and You bear all risks associated with access to and use of such Web sites and third party content, products, services and information.

14.2 Any Third Party Content made accessible by Oracle is provided on an “as is” and “as available” basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and You acknowledge that Oracle is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, Oracle reserves the right to take remedial action if any such content violates applicable restrictions under of this Master Agreement, including the removal of, or disablement of access to, such content. Oracle disclaims all liabilities arising from or related to Third Party Content.

14.3 You acknowledge that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™ and Twitter™, etc. (each, a “Third Party Service”), depend on the continuing availability of such third parties’ respective application programming interfaces (APIs) for use with the Services. Oracle may update, change or modify the Services under this Master Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Oracle in its sole discretion, Oracle may cease providing access to the affected Third Party Content or Third Party Services without any liability to You. Any change to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect Your obligations under this Master Agreement or the applicable order, and You will not be entitled to any refund, credit or other compensation due to any such change.

14.4 Any Third Party Content that You store in Your Services Environment will count towards any storage or other allotments applicable to the Cloud Services that You ordered.

15. SERVICES TOOLS AND ANCILLARY SOFTWARE

15.1 Oracle may use tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve Your Oracle service requests. The Tools will not collect or store any of Your Content or Your Applications residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Your Content and Your Applications) may also be used to assist in managing Oracle’s product and service portfolio, to help Oracle address deficiencies in its product and service offerings, and for license and Services management.

15.2 Oracle may provide You with on-line access to download certain Ancillary Software for use with the Services. If Oracle licenses Ancillary Software to You and does not specify separate terms for such Ancillary Software, then, subject to Your payment obligations, (i) You have the non-exclusive, non-assignable, worldwide limited right to use such Ancillary Software solely to facilitate Your access to, operation of, and/or use of the Services Environment, subject to the terms of this Master Agreement and Your order, including the Services Specifications, (ii) Oracle will maintain such Ancillary Software as part of the Cloud Services, and (iii) Your right to use such Ancillary Software will terminate upon the earlier of Oracle’s notice (which may be through posting on <https://support.oracle.com> or such other URL designated by Oracle) or the end of the Cloud Services associated with the Ancillary Software. If Ancillary Software is licensed to You under separate third party license terms, then Your use of such software is subject to such separate terms.

16. SERVICE ANALYSES

Oracle may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Oracle may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content or Confidential Information in a form that could serve to identify You or any individual, and Service Analyses do not constitute Personal Data. Oracle retains all intellectual property rights in Service Analyses.

17. ADDITIONAL NOTICE TERMS

17.1 To request a termination of Services in accordance with this Master Agreement, You must submit a service request to Oracle at the address specified in Your order or the Service Specifications.

17.2 Oracle may give notices applicable to Oracle's Cloud Services customer base by means of a general notice on the Oracle portal for the Cloud Services, and notices specific to You by electronic mail to Your e-mail address on record in Oracle's account information or by written communication sent by first class mail or pre-paid post to Your address on record in Oracle's account information.

18. ADDITIONAL EXPORT TERMS

18.1 You acknowledge that the Cloud Services are designed with capabilities for You and Your Users to access the Services Environment without regard to geographic location and to transfer or otherwise move Your Content and Your Applications between the Services Environment and other locations such as User workstations. You are solely responsible for the authorization and management of User accounts, as well as export control and geographic transfer of Your Content and Your Applications.

19. OTHER

19.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We are each responsible for paying our own employees, including employment related taxes and insurance. You understand that Oracle's business partners and other third parties, including any third parties with which Oracle has an integration or that are retained by You to provide consulting or implementation services or applications that interact with the Cloud Services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for, bound by, or responsible for any problems with the Services, Your Content or Your Applications arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as an Oracle subcontractor on an engagement ordered under this Master Agreement and, if so, then only to the same extent as Oracle would be responsible for Oracle resources under this Master Agreement.

19.2 You shall obtain at Your sole expense, any rights and consents from third parties necessary for Your Content, Your Applications, and Third Party Content, as well as other vendor's products provided by You that You use with the Services, including such rights and consents as necessary for Oracle to perform the Services under this Master Agreement.

19.3 You agree to provide Oracle with all information, access and full good faith cooperation reasonably necessary to enable Oracle to provide the Services and You will perform the actions identified in Your order as Your responsibilities.


19.4 You remain solely responsible for Your regulatory compliance in connection with Your use of the Services. You are responsible for making Oracle aware of any technical requirements that result from Your regulatory obligations prior to entering into an order governed by this Master Agreement. Oracle will cooperate with Your efforts to determine whether use of the standard Oracle Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by Oracle or changes to the Services.

19.5 Oracle may audit Your use of the Services (e.g., through use of software tools) to assess whether Your use of the Services is in accordance with Your order and the terms of this Master Agreement. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to pay within 30 days of written notification any fees applicable to Your use of the Services in excess of Your rights. If You do not pay, Oracle can end Your Services and/or Your order. You agree that Oracle shall not be responsible for any of Your costs incurred in cooperating with the audit.

19.6 In the event of any inconsistencies between the terms of an order and the Master Agreement, the order shall take precedence; however, unless expressly stated otherwise in an order, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in an order. Except as otherwise permitted in Section 4 (Service

Specifications), Section 10 (Data Protection) and Section 14 (Third Party Web Sites) with respect to the Services, this Master Agreement and orders hereunder may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of You and of Oracle. No third party beneficiary relationships are created by this Master Agreement.


MEMORANDUM

TO: Keith Hunke
FROM: Sheila Hillman 
DATE: May 20, 2015
SUBJECT: Special Assessment Commission appointment

Please place the appointment of Keith Ulmer as a member of the Special Assessment Commission on the consent agenda for the City Commission meeting on May 26, 2015. Mr. Ulmer agreed to fill the position vacated by Dennis Schlittlenhardt at the end of his term. With Commission confirmation of this appointment, the term will expire in April of 2021.

MEMORANDUM

TO: Keith Hunke

FROM: Sheila Hillman 


DATE: May 19, 2015

SUBJECT: 1996 Base Year for TIF

Please place this item on the consent agenda for the City Commission meeting on May 26, 2015.

The 2011 Legislative action amended NDCC 40-58-20 to limit a tax increment district established before July 1, 2011 to no more than 25 years. In discussion with the City Attorney, 1996 was established as the base year to comply with this change. The base year presented to the Commission for approval on May 28, 2013, however, was 1998. This was a typo and the taxable values in TIF were changed to the 1996 values. The only correction is the Commission approval of 1996 as the base year for TIF.

MEMORANDUM

TO: Keith Hunke
FROM: Sheila Hillman 
DATE: May 19, 2015
SUBJECT: Approval of State Tax Commissioner's Contract

Please place this item on the consent agenda for the City Commission meeting on May 26, 2015.

The City currently has a biennium contract with the ND Office of the State Tax Commissioner which is scheduled for renewal in July of 2015. The Tax Commissioner's office provides the collection and remittance of the local taxes for the City for a monthly administrative fee of \$7,250. The contract is attached for Commission approval.

Enclosure



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER

Ryan Rauschenberger, Commissioner

May 12, 2015

Ref: L0169166080

MR. MC SEMINARY
PRESIDENT, BOARD OF CITY COMMISSIONERS
PO BOX 5503
BISMARCK ND 58506-5503

Dear Mr. Seminary:

Enclosed are two copies of a contract authorizing the Office of State Tax Commissioner to administer the City of Bismarck's local sales, use and gross receipts taxes for the 2015 - 2017 biennium.

The administration fee for this contract will be the lesser of \$35 per permit per year, or 3 percent of the tax collected. Based on the current number of retail businesses with sales, use and gross receipts tax permits for the City of Bismarck and the past two years history of sales and purchases, the administration fee for the City of Bismarck is listed in the enclosed contract. The administration fee will be withheld from the monthly tax collections received in this office.

The financial needs facing North Dakota cities continue to change each year and so do the challenges of finding revenue sources to fund these areas. It is important for your city to ensure that all possible city tax collections are received. One way is to provide this office with timely notice of all property annexations. Once notification is received, we notify the businesses affected by the annexation of their local tax collection responsibility. The attached contract requires at least a ninety day notice when property has been annexed into the incorporated boundary of a city.

Please sign the enclosed contracts and return one signed copy to the Office of State Tax Commissioner by June 11, 2015. If you have any questions about the contract or administration of your city's sales, use and gross receipts tax, please contact Susan Rood in our Sales and Special Taxes Division at (701) 328-3389.

I appreciate the strong working relationship we have developed with North Dakota's cities and counties. If our office can be of assistance to you in any way, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Ryan Rauschenberger".

Ryan Rauschenberger
Tax Commissioner

Enc.



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER

Ryan Rauschenberger, Commissioner

Ref: L0169166080

ID: 45-6002036

(063)



Contract For Collection of city Sales, Use and Gross Receipts Taxes

This contract is entered into by the Tax Commissioner of the State of North Dakota and the governing body of the City of Bismarck, North Dakota through the Bismarck City Auditor, under the provisions of North Dakota Century Code § 57-01-02.1.

This contract provides for services to be furnished, as follows:

1. The Office of State Tax Commissioner (Tax Commissioner) hereby assumes the responsibility of administering Ordinance 4074 of the Bismarck Municipal Code of Ordinances (Ordinance). The administration by the Tax Commissioner must be carried out in accordance with the relevant provisions of North Dakota Century Code Chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.
2. The Tax Commissioner, by letter and personal contact, will inform the appropriate permit holders of their collection and remission responsibilities imposed by the Ordinance.
3. The Tax Commissioner shall design tax reporting forms which will be made available to the appropriate permit holders prior to the filing due dates.
4. The Tax Commissioner shall make available the proper rate chart(s) to the appropriate permit holders for use in computation of the state and city taxes.
5. The Tax Commissioner shall collect the tax imposed by the Ordinance on a monthly, quarterly or other periodic basis deemed necessary by the Tax Commissioner.
6. The Tax Commissioner assumes the responsibility for collection of any civil penalties due or criminal prosecution required under the Ordinance to the extent not in conflict with state law.
7. The Tax Commissioner shall certify on a monthly basis to the North Dakota State Treasurer the amount of tax payable to the City of Bismarck.
8. The Tax Commissioner shall refund to purchasers the difference between the amount of sales, use, or gross receipts tax paid and the amount that would have been due by application of a cap or threshold provided by the city's ordinance or home rule charter. The refund shall exclude any refund or credit provided by the retailer at the time of purchase.
9. At the Tax Commissioner's discretion, the Tax Commissioner shall audit the appropriate permit holders.

The City of Bismarck has the following responsibilities under this contract:

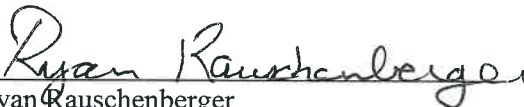
1. The city's Ordinance shall conform in all respects with regard to the taxable or exempt status of sales under chapters 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2.
2. The city's Ordinance shall provide for only one local tax rate; therefore, all sales, use, and gross receipts taxes will be imposed at the same rate.
3. Tax rate changes shall be effective on the first day of a calendar quarter and after ninety days notice which must be provided to the Tax Commissioner after final approval of the tax ordinance.
4. The City of Bismarck shall provide the Tax Commissioner information about all boundary changes, which shall include all business addresses and zip codes within the changed area. For purposes of local sales, use and gross receipts taxes, boundary changes shall be effective on the first day of a calendar quarter and after ninety days notice which must be provided to the Tax Commissioner after final approval of the boundary change.
5. The City of Bismarck shall provide notice to the Tax Commissioner on the continuation or termination of the local tax at least ninety days prior to the date the tax imposed by the ordinance is continued or terminated.

In consideration for the above-enumerated services for the period July 1, 2015 through June 30, 2017, the Tax Commissioner shall retain \$7,250.00 per month of the tax collected under the Ordinance.

This agreement, which supersedes any prior written or oral agreements between the parties, is effective upon the signature by the Bismarck City Auditor, acting on behalf of the City of Bismarck, and the Tax Commissioner for the State of North Dakota, and shall be effective July 1, 2015 through June 30, 2017.

This agreement shall be subject to renegotiation for the purpose of renewal July 01, 2017.

Dated the 12nd day of May 2015, at Bismarck, North Dakota.



Ryan Kauschenberger
Tax Commissioner

Dated the _____ day of _____ 2015 at _____, North Dakota.

Mc Seminary
Bismarck City Auditor
E-Mail: _____

MEMORANDUM

TO: Keith Hunke

FROM: Sheila Hillman 

DATE: May 18, 2015

SUBJECT: Approval of Contract with Vanguard Appraisals, Inc.

Please place this item on the consent agenda for the City Commission meeting on May 26, 2015.

The City currently has a contract with Vanguard Appraisals, Inc. for the purchase, implementation and conversion of data for a new computer assisted mass appraisal (CAMA) system for Assessing. The plan is to hire temporary staff to assist in the review of the property data and drawings and this requires two additional licenses from Vanguard. The cost is \$800 with \$550 annual maintenance for five years with funding from Assessing's current budget. The contract is attached for Commission approval.

Enclosure

LICENSE AGREEMENT

This Agreement is made and entered into this 7th day of May, 2015 by and between VANGUARD APPRAISALS, INC., an Iowa corporation, having offices at 1065 Sierra Ct. N.E., Suite D, Cedar Rapids, Iowa 52402 ("Vanguard") and Bismarck City, ND, Acting Assessor ("Client").

WHEREAS, Vanguard owns, and licenses others to use, certain computer application software modules and related materials known as Vanguard Computer Systems *CAMAvision®* software for personal property appraisals and real estate appraisals, and

WHEREAS, Client desires to purchase from Vanguard a non-exclusive license and right to use selected portions or modules of the Vanguard Computer Systems *CAMAvision®* software and related materials solely for Client's own purpose of appraising real estate and/or personal property, and Vanguard is willing to grant Client such a license subject to the terms and conditions of this Agreement.

Now therefore, the parties agree as follows:

1. **LICENSED MATERIALS.** "Licensed Materials" shall mean the selected portions or modules of the Vanguard Computer Systems *CAMAvision®* software identified on Schedule A attached hereto and incorporated herein by reference, and any related documentation or materials, and any updates and additions to such software, documentation or materials, to be furnished to Client under this Agreement from time to time.

2. **GRANT OF LICENSE.** Vanguard grants to Client and Client accepts, on and subject to limitations, terms and conditions set forth in this Agreement, a non-exclusive, non-transferable right and license to use Licensed Materials solely for Client's personal and internal purpose of appraising real estate and/or personal property. Each module of the Licensed Materials may only be installed and used on one server at a time, and the Licensed Materials may only be accessed at any one time by the number of users for which Client has paid a license fee as set forth in Schedule A. Additional licensed users for each of the Licensed Materials and additional modules of the Vanguard Computer Systems *CAMAvision®* software may be added to this License Agreement as Licensed Materials through supplements to Schedule A approved in writing by both Vanguard and Client, or pursuant to a new License Agreement executed by the parties.

3. **LICENSE FEES.**

(a) Vanguard shall supply the modules of the Licensed Materials and/or Internet Service listed on the attached Schedule A and Vanguard will invoice Client for, and Client agrees to pay, the license fees indicated on the attached Schedule A.

(b) All license fees are exclusive of shipping charges and any federal, state, provincial or local taxes, including any sales, use, VAT or other taxes imposed on this transaction, the license fees, or on Licensee's use or possession of the Licensed materials, all of which, if any, shall be paid by Client without deduction from the license fees.

(c) Fees paid or payable by Client for the purchase of the license for the Licensed Materials are not refundable by Vanguard, and no adjustment will be made to such fees if Client discontinues use of the Licensed Materials or if Vanguard terminates this Agreement under Section 8(b) below. Vanguard reserves the right to collect 75% of the total license fees should the client choose to cancel this Agreement prior to installation of the Licensed Materials.

4. **LIMITATIONS ON USE OF THE LICENSED MATERIALS.** Client shall not, directly or indirectly:

(a) allow the modules contained in the Licensed materials to be used at any point in time by more than the number of persons for whom a licensee fee has been paid, as specified on Schedule A, and all such use may only be by those persons using such modules for the benefit of Client in the course and scope of their employment as an employee of Client;

(b) copy, modify or create derivative works of the Licensed Materials;

(c) transmit, translate, reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Licensed Materials;

(d) without the prior written consent of Vanguard, which consent may be withheld by Vanguard in its sole discretion, assign this Agreement, or rent, lease, license, sublicense the Licensed Materials to any other person, or transfer,

Vanguard Appraisals, Inc.

allow access to, distribute or otherwise make available License Materials to independent contractors or others who do not receive a Form W-2, Wage and Tax Statement, from Client, as used in the United States income tax system as an information return to report wages paid to employees and the taxes withheld from them, or to allow others to do so; or;

(e) incorporate the Licensed Software, in whole or in part, into a product which Vanguard determines is designed to compete with the Licensed Materials, which will include, but not be limited to, local databases or Web-based search engines; or

(f) make more than one copy of the Licensed Materials for backup.

5. **CONFIDENTIALITY.**

(a) Client covenants and agrees as follows:

(1) to receive and hold in confidence all Confidential Information revealed to Client by Vanguard pursuant to this Agreement;

(2) to not disclose any Confidential Information except to regular employees of Client who will receive a Form W-2, Wage and Tax Statement, from Client, in the current tax year (hereinafter referred to as "Client's Representatives") who have a reasonable need-to-know, who know of Client's obligations hereunder, and who are under like obligations with respect to Confidential Information received hereunder by virtue of their employment relationship with Client. Client assumes full responsibility for the compliance of Client's Representatives with the restrictions of this Agreement, all of which restrictions shall apply to and bind Client's Representatives. Any other disclosure of Vanguard's Confidential Information shall require Vanguard's prior written permission and execution of a similar agreement.

(3) not to use any Confidential Information for itself or for any third party or for any reason or purpose other than solely for its own purpose of appraising real estate;

(4) not to use any Confidential Information in any way detrimental to Vanguard (it being acknowledged that any use of Confidential Information by Client for purposes other than to solely for its own purpose of appraising real estate will be deemed detrimental to Vanguard and that no such use shall allow any disclosure that violates paragraph 5(a)(2) above; and

(5) at any time, upon the written request of Vanguard, (i) immediately return to Vanguard all copies of Licensed Materials and all additional documents and things within Client's possession, custody or control containing or reflecting any Confidential Information, (ii) irretrievably delete or erase all Confidential Information from any electronic storage medium (i.e., computers, computer disks, zip drives, etc.) within Client's possession, custody or control and provide Vanguard with a written statement confirming that all Confidential Information of Vanguard has been returned or deleted, and (iii) make no further use of the Confidential Information.

(b) As used in this Agreement, "Confidential Information" shall mean information relating to the Licensed Materials presented or disclosed to Client by Vanguard, whether such information is presented or disclosed in writing, electronic form, orally or obtained by visual inspection. Client agrees and acknowledges that such Confidential Information is not generally known to Vanguard's competitors, which gives Vanguard a competitive advantage over others who do not possess such Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information (regardless of how it may be marked) which (a) is already rightfully known to Client unless it is only known by Client due to Vanguard's disclosure of Confidential Information to Client prior to the execution of this Agreement, (b) was or becomes publicly known without disclosure by Client, (c) was or is acquired by Client from a third party, provided that the third party providing such information has not thereby breached any agreement with, or acted in derogation of, any confidential relationship with Vanguard, or (d) is disclosed pursuant to the lawful requirement of a government agency or is required by operation of law provided that Client gives Vanguard written notice of said disclosure request and a copy thereof so that Vanguard can take action, if any, to protect its Confidential Information. The burden shall be on Client to establish that information pertaining to Vanguard and/or the Licensed Materials is not Confidential Information.

6. **LIMITED WARRANTY.**

(a) Vanguard warrants that during the Warranty Period (as defined below) the software module(s) contained in the Licensed Materials will be free from material, reproducible programming malfunctions or defects and will operate in all material respects in conformity with the current specifications for such module(s) published by Vanguard. Vanguard does not warrant that the modules in the Licensed Materials will operate uninterrupted or error free.

(b) As the sole obligation of Vanguard and the sole remedy of Client under the foregoing warranty, Vanguard will seek to correct, through the means Vanguard determines to be most appropriate, any malfunction or defect in such Licensed Materials at no additional charge to Client within a reasonable time after they become known, provided (1) such malfunctions or defects are reported to Vanguard by Client within twelve (12) months from the effective date of this Agreement or thereafter during any period in which Client maintains a Service Contract with Vanguard under which Client is current and not in default (the "Warranty Period"), and (2) Vanguard is able to reproduce and confirm the reported malfunction or defect.

(c) The foregoing limited warranty shall be null and void, and Vanguard shall have no warranty obligation with respect to any software module contained in the Licensed Materials if such module is modified or altered by any party other than Vanguard, its employees or agents, or such module is used for purposes for which it was not intended or for purposes not authorized by this Agreement, or the module was damaged due to causes external to such software (e.g., a power surge or electromagnetic field, etc.). Vanguard shall have no responsibility for any hardware failures.

(d) THE LICENSED MATERIALS ARE OTHERWISE PROVIDED AS IS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VANGUARD FURTHER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM INTERFERENCE WITH ENJOYMENT OR FROM NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. AND ANY WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE LICENSED MATERIALS REMAINS WITH CLIENT.

(e) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL VANGUARD OR ITS SUPPLIERS BE LIABLE TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE LICENSED MATERIALS, EVEN IF VANGUARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT. In no event shall Vanguard's liability for the performance or nonperformance of this Agreement, or otherwise, exceed the amount actually paid to Vanguard under this Agreement.

7. **TITLE.** Title, ownership, rights and intellectual property rights in and to the Licensed Materials shall remain in Vanguard and/or its suppliers. The Licensed Materials are protected by the copyright laws of the United States and international copyright treaties. Title, ownership rights and intellectual property rights in and to the content accessed through the Licensed Materials is the property of the applicable content owner and may be protected by applicable copyright or other law. This license gives you no rights to such content.

8. **TERM.**

(a) The rights granted by Vanguard shall take effect on the date first written above and shall remain in force as long as Client is in compliance with the limitations, terms and conditions of this Agreement, provided Vanguard reserves the right to change this Agreement when deemed necessary in Vanguard's discretion due to changes in technical specifications.

(b) Vanguard further reserves the right to terminate this Agreement and any Service Contract by written notice to Client if Client fails to comply with any of the limitations, terms or conditions set forth in this Agreement and such failure continues for a period of ten (10) days after Client receives written notice of such failure from Vanguard.

(c) Upon termination of this Agreement in accordance with Section 8(b), Client shall cease to use, and promptly relinquish and return to Vanguard the Licensed Materials, and Vanguard shall have the right to uninstall Licensed Materials from the Client's system. Sections, 4, 5, 6, 7 and 10 shall survive any termination of this Agreement.

9. **REPRESENTATIONS AND WARRANTIES OF CLIENT.** Client represents and warrants to Vanguard as follows:

(a) Client has taken all necessary action to make this Agreement legally binding on Client, that the individual signing this Agreement on behalf of Client has been fully authorized and empowered to execute this Agreement on behalf of Client, and this Agreement constitutes a legal, valid and binding obligation of Client in accordance with its terms, (b) no consent,

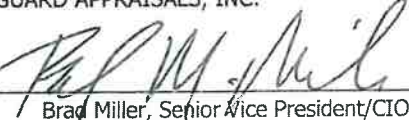
Vanguard Appraisals, Inc.

approval or authorization by any other party or governmental authority is required in connection with the execution, delivery, validity or enforceability of this Agreement; and (c) Client has funding sufficient for Client to fulfill its obligations under this Agreement.

10. **MISCELLANEOUS.** (a) This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof; (b) this Agreement may be amended only by a writing signed by both parties; (c) this Agreement shall be governed by the laws of the State of Iowa, without regard to conflicts of law provisions; (d) any litigation arising out of this Agreement shall only be commenced in, and Client consents to the exclusive jurisdiction of the state and federal courts sitting in Linn County, Iowa; (e) if any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect; (f) a waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof; (g) the provisions of this Agreement that require or contemplate performance after the expiration or termination of this Agreement shall be enforceable notwithstanding said expiration or termination; (h) neither party shall be in default or be liable for any delay, failure in performance (excepting the obligation to pay), or interruption of service resulting directly or indirectly from any cause beyond its reasonable control; (i) Vanguard shall be entitled (without the necessity of posting any bond or establishing the inadequacy of damages as a remedy) to specific performance and injunctive relief to correct or enjoin any breach or threatened breach of Sections 4 and 5, in addition to all other remedies which might be available at law or in equity; and (j) If any dispute arises under this Agreement, the prevailing party shall be reimbursed by the other party for any and all legal fees and costs associated therewith.

IN WITNESS WHEREOF, the Parties hereto have caused this LICENSE AGREEMENT to be executed by their duly authorized representatives in duplicate as of the date and year first above written.

VANGUARD APPRAISALS, INC.

By: 
Brad Miller, Senior Vice President/CIO

ND0005
Bismarck City

By: _____
Official Title: _____
Date: _____

Bismarck City *(Additional signature if required by jurisdiction.)*

By: _____
Official Title: _____
Date: _____

Vanguard Appraisals, Inc.

SCHEDULE "A"
Bismarck City ND0005

LICENSED MATERIALS:

FEE:

Network Upgrade(incl.1 workstation)
License No. - NET0235 adding (2) additional workstations

prior purchase
\$ 800.00

Total

\$800.00

SERVICE CONTRACT

Network Upgrade-(2) additional workstations

This Service Contract is made and entered into by and between Vanguard Appraisals, Inc., an Iowa corporation ("Vanguard") and the Bismarck City, ND, Acting Assessor ("Client").

WHEREAS, Vanguard owns certain computer application software modules and related materials known as Vanguard Computer Systems software and the Client is presently using or desires to use said system under license from Vanguard and in connection with such use Vanguard agrees to provide the Client with the following services as applicable:

1. **TERM.** This contract is for a five year period upon software installation or commencing on 09/07/2015 whichever comes first. Vanguard reserves the right to collect 75% of the total service fees should the client choose to terminate the service contract prior to installation of the Licensed Materials. This contract shall automatically renew on the contract date at Vanguard's then current service contract rate unless the Client notifies Vanguard of their desire to cancel within thirty (30) days prior to renewal, otherwise the cancellation date shall be on the date of notification to Vanguard. Vanguard must be notified in writing of any cancellation of service.
2. **INSTALLATION AND TRAINING.** Vanguard shall install and test the software on the Client's equipment. Up to 0 hours of hands-on, on-site training, working with the Client's personnel will be provided by Vanguard under this Contract. All time for installation, training and Vanguard's staff travel time will count against and be deducted from the service contract time balance. See item 6 for additional installations.
3. **ENHANCEMENTS, UPDATES AND VERSION CONTROL.** As Vanguard continues to improve on the basic program, and work on suggestions for features and improvements from users, Client will automatically receive during the term of this service contract, provided Client is current and not in default of any payments due Vanguard, all updating information; i.e. cost table revisions, current function enhancements, etc. as and when released by Vanguard, for the modules of the Vanguard Computer Systems software for which Client has a license and maintains this Service Contract. However, this service contract does not include future programs such as, but not limited to, the professional version, income module, data conversion due to software rewrite because of operating system changes, data conversion from other vendor's software, etc. Upon receipt of the newest version of the modules, the Client will only be entitled to receive telephone consultation on prior versions of the modules for no more than one hundred eighty (180) days without additional charge, unless there was prior written consent between the Client and Vanguard. Telephone consultation after one hundred eighty (180) days with respect to prior versions of the modules will be available at our then current normal service fee rate (call for current rate).
4. **CONSULTATION.** All service contract holders have unlimited telephone consultation privileges during normal business hours which relate to operation of Vanguard Computer Systems software (VCS). All non-VCS telephone consultation (such as hardware operations or malfunction, third party software operation or integration, etc.) will be charged at the then current normal telephone service fee rate (call for current rate). Service PLUS contracts for additional time may be purchased at a reduced service fee rate (call for rate).
5. **ADDITIONAL SERVICES.** Additional training and on-site consultation, such as manual level studies, look-up table maintenance, jurisdictional adjustments to data, etc. shall be available at Vanguard's then current normal service fee rate. All staff travel time will be charged at the per diem rate. A minimum charge of one day per instance will be billed. Service PLUS contracts for additional time may be purchased at a reduced service fee rate (call for rate).
6. **ADDITIONAL INSTALLATIONS.** If additional copies of the program were installed on additional computers in the client's office, the terms of this Contract shall apply to additional installations in the same manner as the original installation.
7. **LIMITED WARRANTY.** Vanguard shall perform its services hereunder in a workmanlike manner. Vanguard does not warrant that the services will be error free. EXCEPT AS EXPRESSLY SET FORTH IN THIS SERVICE CONTRACT, VANGUARD EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. In no event shall Vanguard be liable to Client or any other person for any indirect, consequential, special, exemplary, or incidental damages of whatever kind and however caused, even if Vanguard knew or should have known of the possibility of such damages. In no event shall Vanguard's cumulative liability for any claim arising in connection with this Service Contract exceed the total fees and charges paid to Vanguard under this Service Contract during the last 12 months. No action, whether based in contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Contract, may be brought by Client more than 1 year after such cause of action accrued.
8. **SERVICE CONTRACT FEES.** The total service contract fee for the term is as follows:

License - NET0235 adding (2) additional workstations
Network Upgrade(incl.1 workstation).....\$ 2,750.00

All payments to Vanguard under this Service Contract shall be payable in U.S. dollars and shall be net of any and all taxes, withholdings, setoffs, or deductions of any nature.

9. **MISCELLANEOUS.** This Contract (a) constitutes the entire agreement between the parties concerning the subject matter hereof; (b) may be amended only by a writing signed by both parties; (c) shall be governed by the laws of the State of Iowa, without regard to conflicts of law provisions. Any litigation arising out of this Contract shall only be commenced in, and Client consents to the exclusive jurisdiction of the state and federal courts sitting in Linn County, Iowa. If any provision in this Contract should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent or severed from this Contract if no such modification is possible, and other provisions of this Contract shall remain in full force and effect; A waiver by either party of any term or condition of this Contract or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. Neither party shall be in default or be liable for any delay, failure in performance (excepting the obligation to pay), or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.

**SERVICE CONTRACT
Signature Page**

VANGUARD APPRAISALS, INC.

By: _____

Brad M. Miller, Senior Vice President/CIO
Dated: May 7, 2015

**ND0005
Bismarck City**

By: _____

Official Title: _____

Date: _____

Bismarck City *(Additional signature if required by jurisdiction.)*

By: _____

Official Title: _____

Date: _____

NET0235 Network Upgrade(adding (2) additional workstations)
commencing on 09/07/2015 whichever comes first

This contract is for a five year period upon software installation or

CONTRACT REVIEW FORM

DEPARTMENT

Contract between the City of Bismarck and Butler Machinery

Purpose of Contract: Maintenance Program for Emergency Generator - Water Plant

Contract Amount: \$ 5501 per 3 years.

Contract Period: May 26, 2015 thru March 31, 2018

Funding Source: 665-680-667-4330-200

Project Number: (If needed, send copy to Fiscal Services)

Comments: Renewal of 3 year service contract for Emergency Generator
On Commission agenda for 5/26/15

After Mayor's Signature, route to: Keith Denke Date: 5/20/15

Department Head Signature: Ken Dehn Date:

CITY ATTORNEY

Comments: OK

City Attorney Signature: CAW Date: 5-21-15

FINANCE

Comments: OK

Director of Finance Signature: Phaedra Meemore Date: 5-21-15

ADMINISTRATION

City Administrator Signature: W. W. W. Date: 5/21/15

ATTENTION:

Attach a signature flag at each place you want the Mayor to sign.
Please send copy of completed contracts to Administration.

Print Form

Butler

Power Generation
Scheduled Maintenance
Service

SERVICING BRANCH

- | | |
|------------------------------------|--|
| <input type="checkbox"/> Fargo | <input checked="" type="checkbox"/> Bismarck |
| <input type="checkbox"/> Minot | <input type="checkbox"/> Dickinson |
| <input type="checkbox"/> Jamestown | <input type="checkbox"/> Sioux Falls |
| <input type="checkbox"/> Aberdeen | <input type="checkbox"/> Rapid City |

Customer Support Agreement

City Of Bismarck (Public Works)		Account C69624	Equipment Location	
Address PO Box 5503		Work performed at the water treatment plant in Bismarck.		
City/State/Zip Bismarck, ND 58506				
Phone # 701-355-1660	Job Site Brian Young	Hours		
Model AA	3516	Engine Serial PBR00204	Unit	Date of last service 17-Apr-14
Air filters (not included)		Air filter change instructions		
<input type="checkbox"/> Standard <input type="checkbox"/> Radial Seal <input type="checkbox"/> Panel <input type="checkbox"/> Other		Dry filters not included in pricing.		
Billing	<input checked="" type="checkbox"/> Future <input type="checkbox"/> Arrears <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annually <input checked="" type="checkbox"/> Annually	Level of Last Service REPAIRS		
Switch Inspections N/A	Annual Insp \$815.00 x 3	Eng Service \$3,056	S Per Term \$5,501	Start Date 4.1.2015
				End Date 3.31.2018
				Length 36 Months

Terms and Conditions**Butler Machinery Company**

- Butler Machinery Company will undertake to carry out, at regular intervals, scheduled maintenance to the product listed, as established by the manufacturer's lubrication and maintenance guidelines. Butler Machinery Company will provide all fluid elements, fluid filters, gaskets, seals and fluids required for such servicing at the cost listed on this agreement.
- Butler Machinery Company is responsible for listed intervals of maintenance and inspections. No cleaning is included.
- Butler Machinery Company will undertake the implementation of the Butler SOS Program during the recommended interval.

Customer

- The customer undertakes that the product shall be made available to Butler Machinery Company for services scheduled by agreement between Butler Machinery Company and the customer. In the event that the product is not made available to Butler Machinery Company's representative, the customer will pay Butler Machinery company in respect to waiting, and travel time at Butler's normal field service charge out rate.
- Customer agrees to provide Butler Machinery Company with accurate product hours/miles upon request or at an established interval.
- Customer is responsible for cleaning, daily and weekly maintenance and inspections.
- Customer agrees to comply with the product manufacturer's Operation, Lubrication and Maintenance Guidelines.
- In the event that any problems that affect product operation occur, the customer agrees to contact Butler Machinery Company as soon as possible.

General

- Travel costs are not included.
- Applicable local, state and federal taxes are not included in prices listed, and will be added to each invoice as they apply.
- This agreement covers preventive maintenance only. All repairs, including acts of nature, fire, theft, vandalism, accident and abuse are specifically excluded from this agreement. Charges for the above items will be billed at the standard published rates.
- Prices are effective for term of contract unless otherwise stated.
- This agreement does not provide for a loaner or replacement product.
- This agreement may be terminated by either party with 30 day written notice. Failure to provide proper notice at the agreement term will provide automatic renewal at current parts & labor prices.
- The services to be performed under this agreement are not a guarantee against obsolescence or normal wear. Nor shall inspections be construed as an approval or guarantee of the condition of the equipment.

Acknowledgement of Terms

Customer _____

Butler Machinery _____

Date _____

Date _____

Larry Vogel
 4/12/15

Butler Machinery Scheduled Maintenance contact name & phone # _____

Service Dept.
Representative _____

April 1, 2015

Brian Young
Bismarck Water Treatment Plant

Butler Machinery Company is pleased to offer our Generator Planned Maintenance Program to you. This program is a three (2) level PM program that includes the following services:

LEVEL I (Annual) MAINTENANCE. Includes checking the batteries for proper specific gravity, load testing, testing of the coolant for proper concentration levels of antifreeze and conditioner, visual inspection of all vee belts, hoses, and radiator core and piping, and collect oil and coolant samples. We will start the generator and transfer the building load to check generator performance and switchgear operation and test all engine safety related shutdowns. Level I maintenance will be performed 1 time per year and if the contract is accepted we will set up and confirm approximate dates and times.

LEVEL II (Engine Service) MAINTENANCE. Includes engine oil, oil filters and fuel filters. Level II Maintenance is determined by SOS sampling allowing sampling to extend engine service intervals (typically no longer than three years). Level II maintenance will be performed at the same time as the level I maintenance in the first year of the contract term.

The total annual cost for enrollment into this planned maintenance program is \$5501.00. **These prices do not include zone charges, air filters, batteries, fuel samples or applicable sales taxes.** Upon completion of the inspections you will be notified of any needed repairs.

ANNUAL (level I) \$815.00 X 3 = \$2445.00.

ENGINE SERVICE \$3055.00 = \$3055.00.


TRANSFER SWITCH INSP. Do not need to be done since the breakers are vacuum sealed.

The program can easily be modified to meet your specific needs. To enroll in this program, simply sign and return one copy of the enclosed contract.

Butler Machinery Company's goal is to assist you in making sure that your generator is in full operational condition when you need it the most. We are looking forward to working with you on this maintenance program.

If you have any questions regarding this program, please call us at 701-250- 1656.

Sincerely,



Larry Vogel
Customer Support Agreement Coordinator

Enclosures :Contract

Bismarck Police Department

May 14, 2015

To: Mr. Keith Hunke
Assistant City Administrator

From: Dan Donlin
Chief of Police

Subj: Commission Agenda Item for May 26, 2015 - Request to Apply for Grant Funding

Please schedule this item for consideration by the Board of City Commissioners at their meeting on Tuesday, May 26, 2015.

The Police Department is requesting authorization to apply for a "Edward Byrne Memorial Justice Assistance Grant" (JAG) through the Department of Justice (DOJ). The grant amount is for a total of \$27,355.00 with no match required. The total amount, however, is split between the Bismarck Police Department (65%) and the Burleigh County Sheriff's Department (35%). The purpose of the grant is to purchase law enforcement supplies and equipment to enhance the safety, effectiveness and efficiency of the departments. This is an on-going, annual grant opportunity.

The grant application will be processed through the City's Fiscal Grant Coordinator.

I will be available at the meeting to answer any questions.


DAN DONLIN
Chief of Police

dd
attachment

Dave Draovitch

From: [REDACTED]
Sent: Tuesday, May 12, 2015 4:06 PM
Subject: Fiscal Year (FY) 2015 Local Edward Byrne Memorial Justice Assistance Grant (JAG) Program announcement

Good afternoon,

The previous email that you may have received did not include the correct web links to the Fiscal Year (FY) 2015 Local JAG allocations and solicitation. **Please disregard any previous version of this email you received regarding FY 2015 Local JAG and refer to the email below.**

The Bureau of Justice Assistance (BJA) is pleased to announce that FY 15 Local JAG Program funding information is now available and appears on the [BJA JAG web page](#).

Please note that this email is being sent to a large group of potential Local JAG applicants and **does not necessarily confirm your jurisdiction's eligibility under the FY 2015 Local JAG Program.**

Eligible jurisdictions under FY 2015 Local JAG are limited to units of local government appearing on the [FY 2015 Local JAG Allocations list](#). Please verify your eligibility, and **if eligible**, review the associated [FY 2015 Local JAG solicitation](#) and submit an application for funding through the Office of Justice Program's (OJP) [Grants Management System \(GMS\)](#) **by 8:00 p.m. Eastern on Tuesday, June 26, 2015.**

****New this year:** Please closely review the new section of this year's solicitation titled "Prohibited and Controlled Uses" carefully, noting that the BJA controlled/prohibited items list will be updated in the coming weeks and will apply to the FY15 JAG Program. Pursuant to Executive Order 13688 (Federal Support for Local Law Enforcement Equipment Acquisition), a federal inter-agency working group has been charged with, among other things, 'developing a consistent Government-wide list of controlled equipment allowable for acquisition by LEAs, as well as a list of those items that can only be transferred with special authorization and use limitations.' The working group's recommendations, which are due to be delivered to the President in mid-May, will alter the list of items that were

previously prohibited by BJA. Applicants must conform to any updated guidance regarding specialized equipment, and BJA prefers that any justifications for controlled equipment be submitted at the time of application.

Please contact the GMS Help Desk at 1-888-549-9901 (Option 3) prior to the deadline if you experience any technical difficulties with submission. Applications must be submitted by the stated deadline, regardless of whether the 30 day governing body review requirement has been satisfied. BJA will hold applications prior to processing until the 30 day governing body review requirement has been met OR will attach a withholding of funds special condition to the award until the governing body requirement has been satisfied.

For questions related to the JAG solicitation, please contact the National Criminal Justice Reference Service (NCJRS) Response Center: toll-free at 1-800-851-3420; via TTY at 301-240-6310 (hearing impaired only); email responsecenter@ncjrs.gov; fax to 301-240-5830; or web chat at <https://webcontact.ncjrs.gov/ncjchat/chat.jsp>. The NCJRS Response Center hours of operation are 10:00 a.m. to 6:00 p.m. eastern time, Monday through Friday. 10:00 a.m. to 8:00 p.m. eastern time on the solicitation close date. You may also contact your State PolicyAdvisor.



#2H2

May 20, 2015

To: Mr. Keith Hunke
Assistant City Administrator

From: Dan Donlin
Chief of Police

Subj: Commission Agenda Item for May 26, 2015 - Request to Apply for Grant Funding

Please schedule this item for consideration by the Board of City Commissioners at their meeting on Tuesday, May 26, 2015.

The Police Department is requesting authorization to apply for a "North Dakota Department of Health STOP Grant" in collaboration with the Adult Abused Resource Center (AARC). The purpose for the grant is so the AARC may retain a Law Enforcement Domestic Violence Advocate (LEDVA). The grant amount is for a total of \$18,670.00 with \$6,233.00 match required which will be provided by the AARC. There will be no cost to the City of Bismarck. Changes to the application process require the grant be applied for by a Law Enforcement Agency. The AARC has applied for this opportunity in the past but now requires our assistance. The AARC will manage the grant and will provide all required funds.

Please also see the attached document from the AARC which summarizes the grant. The grant review paperwork is currently being sent through the City's grant review process.

I will be available at the meeting to answer any questions.


DAN DONLIN
Chief of Police

dd
attachment

Dan Donlin, Chief of Police

Phone: 701-223-1212 ★ FAX: 701-355-1927 ★ Tdd: 701-221-6820 ★ 700 S. Ninth Street ★ Bismarck, ND 58504-5899



GRANT REVIEW

DEPARTMENT

Attach supporting documentation



Grant Application



Grant Award

Granting Agency: North Dakota Health Department

Description and Purpose of Grant: Obtain Funding for Law Enforcement Domestic Violence Advocate (LEDVA). This grant will be applied for with the assistance of the Adult Abused Resource Center (AARC). The AARC has applied for this grant opportunity many times in the past but the ND Dept. of Health now requires a Law Enforcement Agency to apply for the grant. The grant will be managed by the AARC and there will be no cost to the City of Bismarck or the Police Department. Please see the attached documents which explain the opportunity in more detail.

Grant Amount: \$18,670.00 Grant Match: \$6,223.00 which will be provided by the AARC.

Grant Period: Oct. 1, 2015-Sept. 30, 2016 FTE Requirements: (new or existing) For AARC Only not the City of Bismarck

Indirect Cost Allowed: N/A Funding Source: No Known Indirect Costs

Requirements and Ongoing Cost of Phase-Out: None

Project Code: (Prepared by Fiscal after award received) _____

Comments: Please Fast Track the review as the grant application is due May 29, 2015

Department Signature: Dan Doul

5/20/15
Date

GRANTS COORDINATOR

Comments: _____

Grants Coordinator Signature: _____

Date



Forward as a Contract Review

CITY ATTORNEY

Comments: _____

City Attorney Signature: _____

Date

FINANCE

Comments: _____

Director of Finance Signature: _____

Date

ADMINISTRATION

City Administrator Signature: _____ Date _____

☐

Route Completed Grant Contract to Mayor for Signature.

(1/2013 Revised)

STOP Violence Against Women grant request:

\$18,670 to help pay the salary and related expense for a Law Enforcement Domestic Violence Advocate. This is an existing advocate employed by the Abused Adult Resource Center (AARC), who would be a contractor under this grant. AARC would continue to employ this advocate, generate the reports and any other required documents for this grant.

Match required:

\$6,223 that would be provided by AARC through its donations and other general fund monies.

Funding period:

Oct. 1, 2015-Sept. 30, 2016

Grant purpose:

Implemented in 1997, the Law Enforcement Domestic Violence Advocate (LEDVA) would continue to provide services to domestic violence victims specifically who make a report to law enforcement in Bismarck, Mandan, Morton or Burleigh counties. Because of this program, law enforcement and the AARC have developed a closer collaboration over the past 18 years.

(AARC requested the Bismarck Police Department to act as the applicant for this funding based on a change in the funding process as per the North Dakota Health Department.)



NORTH DAKOTA
DEPARTMENT of HEALTH

*LEPVA
Lawrence
B.S.P.D.*

COMMUNITY HEALTH SECTION
600 East Boulevard Avenue, Dept. 301
Bismarck, ND 58505-0200
www.ndhealth.gov

MEMO

TO: Potential "STOP" Violence Against Women Grant Applicants

FROM: Mary Dasovick, Director
Division of Injury Prevention and Control

DATE: April 16, 2015

RE: STOP Violence Against Women Grant Application

Mary Dasovick

*USE 2014
Viol. prev. grant.*

The North Dakota Department of Health recently applied for the STOP Violence Against Women Formula Grants Program through the Office on Violence Against Women, US Department of Justice. The funds are divided into five categories: law enforcement, prosecution, courts and discretionary funds and are available through a competitive grant process. The fifth category is the victim services funds which are non-competitive and available only to the 20 domestic violence/rape crisis programs in North Dakota.

The focus of the STOP Program is to support communities in their efforts to develop and strengthen effective law enforcement and prosecution strategies to combat domestic violence, sexual assault, dating violence, and stalking crimes against women, and to develop and strengthen victim services. Emphasis is on implementing comprehensive strategies that are sensitive to the needs and safety of victims and hold offenders accountable for their crimes.

The 2015 STOP Violence Against Women Grant Application is to be submitted on the Program Reporting System (PRS). Attached you will find the following documents with instructions on "How to Complete an Application in PRS" and the 2015 STOP grant guidance.

IMPORTANT: To access the application on PRS please email me at mdasovic@nd.gov with your agency's name and your email address no later than May 11, 2015. You will not be able to access and complete the application until permission is given.

The application is available beginning April 16, 2015 and must be submitted by May 29, 2015, through the PRS to be eligible for the review process.

If you have questions, please call me at 1.800.472.2286 press #1 or 328.3340 or email me at mdasovic@nd.gov.



Engineering Department

#211

May 20, 2015

MEMORANDUM

To: Keith Hunke
Assistant City Administrator

From: Mel Bullinger, P.E.
City Engineer

A handwritten signature in blue ink, appearing to be "MB", is written over the name "Mel Bullinger, P.E." in the "From:" field.

Re: AGENDA ITEM
Sanitary Sewer Easement - Redland LLC

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, May 26, 2015, at 5:15 p.m. in the Tom Baker Room.

Attached for your review and approval is the following:

Sanitary Sewer Easement. This easement is needed to extend the existing Hay Creek sanitary sewer main from the north addition line of Meadowlark Commercial 7th Addition to 71st Avenue right-of-way as part of Sewer Utility Project SU 15-58 (formerly Sewer Improvement District No. 14-546).

MJB/ds
Enc.

Melvin J. Bullinger, P.E., City Engineer

Phone: 701-355-1505 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503

SANITARY SEWER EASEMENT

This indenture, made this 27 day of April, 2015, between **Redland LLC**, whose post office address is 1505 N Miller St., Suite #260, Wenatchee, WA 98801, Grantor, and the **City of Bismarck**, a municipal corporation, whose post office address is P.O. Box 5503, Bismarck, North Dakota 58506-5503, Grantee.

1. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, an exclusive easement to construct, operate, maintain, and repair public utility facilities including sanitary sewer under or upon the real property hereinafter described, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said utility. Grantee shall have the right to ingress and egress across real property of Grantor for the purpose herein granted.

2. This Easement is, except for right of access, limited to:

Parcel 1

A parcel of land located in the Northwest Quarter of Section 10, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, described as follows:

Commencing at the southeast corner of said Northwest Quarter; thence North 89 degrees 39 minutes 16 seconds West, along the south line of said Northwest Quarter for a distance of 843.61 feet to the point of beginning of the parcel to be described; thence continuing North 89 degrees 39 minutes 16 seconds West along said south line for a distance of 40.00 feet; thence North 00 degrees 30 minutes 26 seconds East for a distance of 285.43 feet; thence North 22 degrees 04 minutes 07 seconds East for a distance of 310.05 feet; thence North 52 degrees 41 minutes 02 seconds West for a distance of 175.03 feet; thence North 03 degrees 40 minutes 58 seconds West for a distance of 483.16 feet; thence North 03 degrees 58 minutes 40 seconds East for a distance of 455.35 feet; thence North 00 degrees 49 minutes 21 seconds East for a distance of 438.16 feet; thence North 38 degrees 32 minutes 16 seconds East for a distance of 310.79 feet; thence North 25 degrees 01 minute 47 seconds East for a distance of 306.90 feet to a point lying 60.00 feet south of and perpendicular to the north line of said Northwest Quarter; thence South 89 degrees 32 minutes 16 seconds East, parallel with said north line for a distance of 164.05 feet; thence South 00 degrees 49 minutes 23 seconds West for a distance of 40.00 feet; thence North 89 degrees 32 minutes 16 seconds West for a distance of 138.10 feet; thence South 25 degrees 01 minute 47 seconds West for a distance of 285.94 feet; thence South 38 degrees 32 minutes 16 seconds West for a distance of 301.86

feet; thence South 00 degrees 49 minutes 21 seconds West for a distance of 425.60 feet; thence South 03 degrees 58 minutes 40 seconds West for a distance of 453.78 feet; thence South 03 degrees 40 minutes 58 seconds East for a distance of 462.26 feet; thence South 52 degrees 41 minutes 02 seconds East for a distance of 187.35 feet; thence South 22 degrees 04 minutes 07 seconds West for a distance of 332.99 feet; thence South 00 degrees 30 minutes 26 seconds West for a distance of 277.70 feet to the point of beginning.

The above described parcel contains 115,892 square feet (2.66 acres) more or less, and is subject to all easements, reservations, restrictions and rights-of-way of record, if any.

3. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this easement, restore the lands to as near their original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or access to the lands. Grantee agrees to pay for damage to fences and growing crops arising from construction, operation, or maintenance.
4. Grantor agrees to not erect or permit any structure or obstruction other than fences or driveways, change the ground elevation, or perform any act that interferes with Grantee's rights under this easement, except with the written consent of Grantee.
5. The term of this easement herein reserved is ninety-nine (99) years, beginning upon execution in 2015 and ending in 2114.
6. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of said land.

Dated this 27 day of APRIL, 2015.

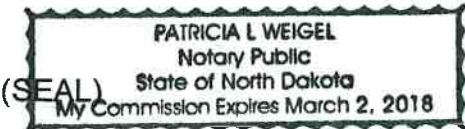
REDLAND LLC

By 

Title Assistant Vice President

STATE OF NORTH DAKOTA)
) SS
COUNTY OF WILLIAMS)

On this 27 day of April, 2015, before me personally appeared _____
Robert Krom, known to me to be the person who is described in,
and who executed the within and foregoing instrument and who severally acknowledged
to me that he/she executed the same.



Patricia L. Weigel
Notary Public
My commission expires: March 2, 2018

Acceptance of dedicated lands by the **City of Bismarck**:

Michael C. Seminary
President, Board City Commissioners
STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

Attest: _____
W. C. Wocken
City Administrator

On this _____ day of _____, 2015, before me personally appeared Michael
C. Seminary, President of Board of City Commissioners, and W. C. Wocken, City
Administrator, known to me to be the persons who are described in, and who executed
the within and foregoing instrument and who severally acknowledged to me that they
executed the same.

(SEAL)

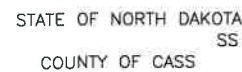
Notary Public
My commission expires: _____

The legal description was prepared by Boyd Erbele, PLS, 4733 Amber Valley Parkway South, Fargo,
North Dakota 58104.
Burleigh County Recorder

PART OF
NW ¼ OF SECTION 10 T-139-N, R-80-W
FEBRUARY, 2015
OWNERS: Redland LLC

A parcel of land located in the Northwest Quarter of Section 10, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, described as follows:

The above described parcel contains 115,892 square feet (2.66 acres) more or less, and is subject to all easements, reservations, restrictions and rights-of-way of record, if any.



ON THIS 24th DAY OF Feb, 2015, BEFORE ME PERSONALLY APPEARED DAIN K. ERICKSON, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING SURVEYOR'S CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

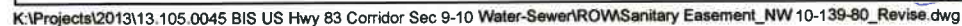
DISTANCES SHOWN ARE AT
A GROUND SCALE FACTOR
OF 1.000148522.



Apex 
Engineering Group

DATE: 02/24/2015

DAIN K. ERICKSON
APEX ENGINEERING GROUP
4733 AMBER VALLEY PARKWAY SOUTH
FARGO, ND 58104






Engineering Department

#212

May 20, 2015

MEMORANDUM

To: Keith Hunke
Assistant City Administrator

From: Mel J. Bullinger, P.E. 
City Engineer

Re: **AGENDA ITEM (SID 14-469)**
Change Order for Design Change

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, May 26, 2015, at 5:15 p.m. in the Tom Baker Room.

When this project (SI 14-469) was first designed, we had not anticipated the extent of sub grade moisture and therefore did not include any method or means to address it in our bid. Since then, it has become apparent that in order to complete the roadway and stabilize the subgrade due to sub surface moisture we will need to stabilize it utilizing a cement modified subgrade. Mariner Construction has requested a contract change order in the amount of \$82,467.00 for cement stabilized subgrade. The net effect on the contract is detailed below, given that sub grade prep (1.0' and 1.5' deep) are no longer required:

Deduct Subgrade Prep (1.0' deep)	\$ 6,318.90
Deduct Subgrade Prep (1.5' deep)	\$ 7,282.80
Subtotal of deduct	\$ 13,601.70
 Increase Cement Stabilized Subgrade	 \$82,467.00
 Net Change to Project	 \$ 68,865.30

MJB/ps

Melvin J. Bullinger, P.E., City Engineer

Phone: 701-355-1505 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503

CONTRACT CHANGE ORDER FORM

DEPARTMENT

Contract between the City of Bismarck and Mariner Construction, Inc.

Contract Number: _____ Change Order Number: 1

Project/Subproject: SI 469 Original Contract Amt: \$217,114.65

Project Description: SI 469 Street Improvement District Four Hundred Sixty Nine (469)

Previous Contract Amount: \$217,114.65

Change Order Amount: \$82,467.00

Original Contract Date: 7/9/13 Change in Contract Timeline: 8/15/15

Within Project Scope: (Y)/ N* Within Project Funding: (Y) N**

**If not within project scope, attach description of change in scope for Board approval.*

***If not within project funding, attach revised Project Budget for Board approval.*

Type of Change Order

_____ Non Design-related Change Order: These change orders include unforeseen conditions, code-related issues, and building inspector changes.

X Design-related Change Order: These change orders include unforeseen conditions that affect the appearance, layout, functionality, dimensions, and/or quality of the project.

_____ Emergency Field Condition Change Orders: These change orders include any condition that causes an emergency situation where safety or other immediate losses may occur.

_____ Other: (describe

Project Manager Signature: (<\$15,000) _____
Date

Department Head Signature: (<\$25,000) _____
Date

ADMINISTRATION

City Administrator Signature: (<\$50,000) _____
Date

Add to Commission Consent Agenda

COMMISSION APPROVAL

Commission Approval Date: _____

Attach minutes for Commission Approval

FISCAL

Comments: _____
Signature Date Completed

TO ALL DEPARTMENTS: Please attach a copy of the change order

MARINER CONSTRUCTION INC.

1771 W Cavalry Dr.
Bismarck, ND 58504
Phone (701)258-3933
Fax (701)258-8987

ESTIMATE

Date	Estimate #
05/18/15	AAAQ3011

Estimate For: 14-469
Linda Smestad
CTB change order request

Work Location:
Address:

Phone:
Fax:

Ln #	Description	Qty	Unit Of Pricing	Unit Price	Ext. Price
1	Soil Stabilization	4,284	SY	\$19.25	\$82,467.00
				Total	\$82,467.00

Soil Stabilization and reshaping before paving.

- * All quotes will be billed by the unit prices on actual amount (unless it is a lump sum job).
- * Any slope under 1.5% slope will have no guarantee of drainage.
- * All private utilities are the responsibility of the owner to notify and locate.
- * Price does not include any testing, staking, erosion control, or bonding.
- *Quote is only good for 30 days, unless signed and returned.

Accepted by: _____

Dated: _____

Payment is due upon completion of the work. A servicecharge of 1.5%/month (18% annually) will be assessed to all accounts not paid within 30 days.

The estimate is for completing the job as described above.
It is based on our evaluation and does not include material price increases or additional labor and materials which may be required should unforeseen problems or adverse weather conditions arise after the work has started.

Estimate By: JESSE

Bismarck

Engineering Department

May 20, 2015

MEMORANDUM

To: Keith Hunke
Assistant City Administrator

From: Mel J. Bullinger, P.E. *MJB*
City Engineer

Re: **AGENDA ITEM (SI 15-498)**
Request for Resolution Creating District and Ordering Preparation of Preliminary Engineering Reports
Request for Resolution Approving Preliminary Reports and Directing the Preparation of Plans and Specifications
Request for Resolution Approving Plans and Specifications
Request for Resolution Declaring Petition for Improvements has been Received
Request for Authorization to Advertise and Receive Bids

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, May 26, 2015, at 5:15 p.m. in the Tom Baker Room.

Street Improvement District No. 15-498 consists of two (2) units of street improvements (see attached maps). Unit 1 and Unit 2, both consists of new asphalt, curb and gutter, ADA ramps, and related work. The work will be funded through special assessments and developer prepayments.

Unit No. 1 (100% Petitioned)

Meridian Drive – West Burleigh Avenue to Washington
 Nina Lane – 140 feet west of Downing Street to Washington Street
 Leighton Drive – Nina Lane to Meridian Drive
 Stacey Drive – Nina Lane to Leighton Drive

Unit No. 2 (100% Petitioned)

Brunswick Drive – 350 feet west of Overlook Drive to 510 feet west of Overlook Drive

Authorization to Advertise:
 Receipt of Bids:
 Award:

May 26, 2015
 July 13, 2015
 July 14, 2015

MJB/ps
 Enc.

cc: Jeff Heintz, Service Operations Director
 Cora Bauer, Special Assessment Coordinator
 Fiscal Services

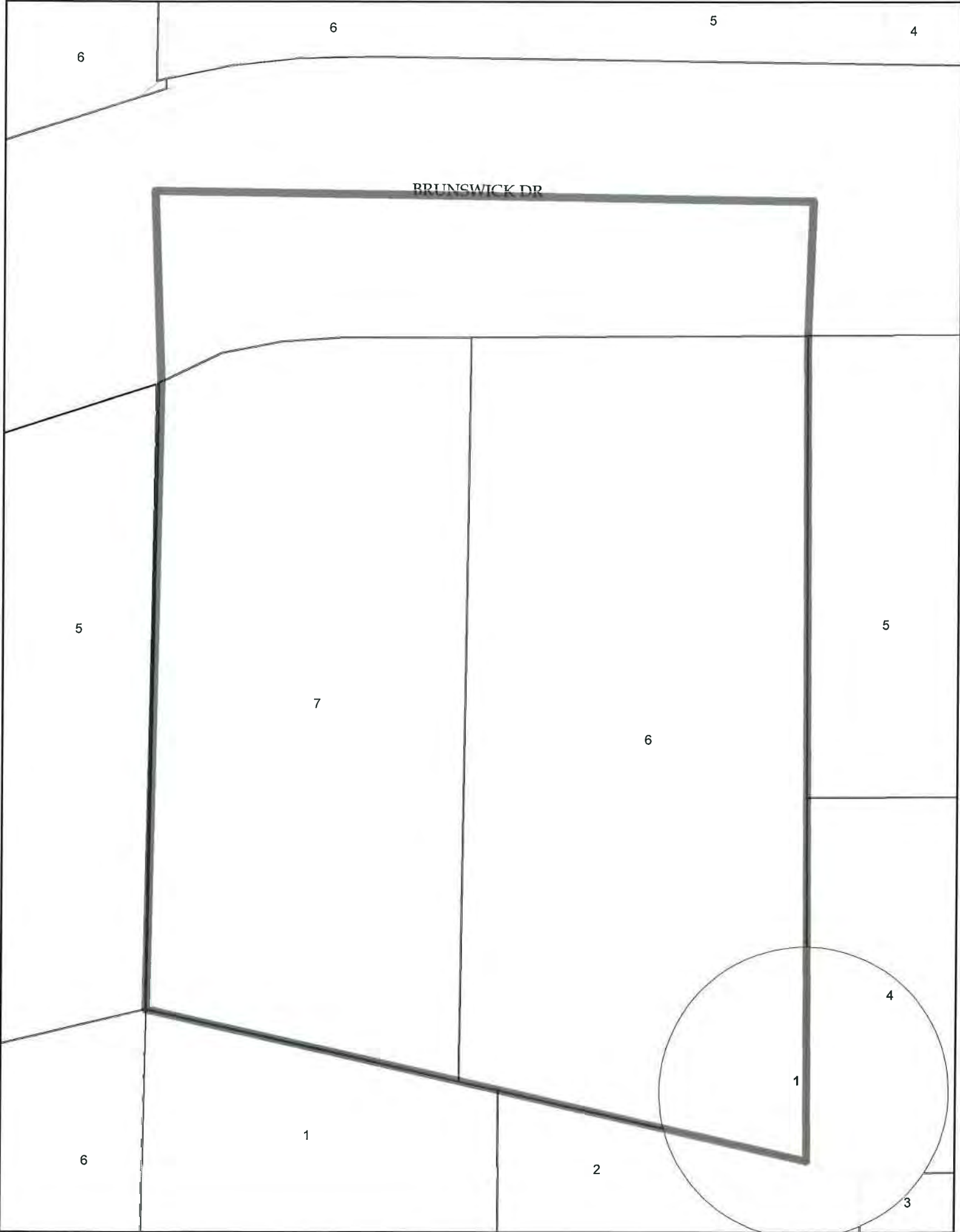
Melvin J. Bullinger, P.E., City Engineer

Phone: 701-355-1505 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503

SI498 - UNIT 1



SI498 - UNIT 2






May 20, 2015

MEMORANDUM

To: Keith Hunke
Assistant City Administrator

From: Mel J. Bullinger, P.E. 
City Engineer

Re: **AGENDA ITEM (SI 15-499)**
Request for Resolution Creating District and Ordering Preparation of Preliminary Engineering Reports
Request for Resolution Approving Preliminary Reports and Directing the Preparation of Plans and Specifications
Request for Resolution Approving Plans and Specifications
Request for Resolution Declaring Petition for Improvements has been Received
Request for Authorization to Advertise and Receive Bids

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, May 26, 2015, at 5:15 p.m. in the Tom Baker Room.

Street Improvement District No. 15-499 consists of one unit of new concrete pavement, curb and gutter, ADA ramps, sidewalk, storm sewer, and related work (see attached map). The work will be funded through special assessments and developer prepayments.

Unit No. 1

Brigade Street – Divide Avenue to 17th Avenue NE
Battalion Street – Platoon Street to 17th Avenue NE
Platoon Street – Brigade Street to 52nd Street

Authorization to Advertise:
Receipt of Bids:
Award:

May 26, 2015
July 6, 2015
July 14, 2015

MJB/ps
Enc.

cc: Jeff Heintz, Service Operations Director
Cora Bauer, Special Assessment Coordinator
Fiscal Services

Melvin J. Bullinger, P.E., City Engineer

Phone: 701-355-1505 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503

This map shows a residential area with the following streets and lot numbers:

- Streets:**
 - E DIVIDE AV** (top horizontal street)
 - 17TH AV** (bottom horizontal street)
 - PLATOON AV** (middle horizontal street)
 - BRIGADE ST** (curved street on the left)
 - BATTALION ST** (curved street on the right)
 - NE 52ND ST** (vertical street on the far right)
- Lots and Markers:**
 - Top Row:** Lots 1, 1, 1, 4, 2.
 - Second Row:** Lot 2 (left), Lot 1 (middle), Lot 2 (right), Lot 3 (far right).
 - Third Row:** Lot 1 (left), Lot 8 (middle), Lot 6 (right), Lot 5 (far right), Lot 4 (far right).
 - Fourth Row:** Lot 3 (left), Lot 7 (middle), Lot 3 (right), Lot 5 (far right), Lot 4 (far right).
 - Fifth Row:** Lot 4 (left), Lot 1 (middle), Lot 2 (middle), Lot 3 (right), Lot 5 (far right), Lot 4 (far right).
 - Sixth Row:** Lot 1 (left), Lot 2 (middle), Lot 5 (right), Lot 4 (far right).
- Markers:**
 - A circle with the number **2** is located on the left side of the map.
 - A circle with the number **3** is located on the right side of the map.
 - A circle with the number **4** is located on the right side of the map.
 - A circle with the number **5** is located on the right side of the map.

1



May 20, 2015

MEMORANDUM

To: Keith Hunke
Assistant City Administrator

From: Mel J. Bullinger, P.E.
City Engineer

Re: AGENDA ITEM (SE 15-562)
Request for Resolution Creating District and Ordering Preparation of Preliminary Engineering Reports
Request for Resolution Approving Preliminary Reports and Directing the Preparation of Plans and Specifications
Request for Resolution Approving Plans and Specifications
Request for Authorization to Advertise and Receive Bids

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, May 26, 2015, at 5:15 p.m. in the Tom Baker Room.

Sewer Improvement District No. 15-562 consists of installation of local storm sewer, detention ponds and storm water, lift station and appurtenances (see attached map). The work will be funded through special assessments and developer prepayments.

Authorization to Advertise:

Receipt of Bids:

Award:

May 26, 2015

June 1, 2015

June 22, 2015

MJB/ps

Enc.

cc: Keith Demke, P.E., Director of Utility Operations
Cora Bauer, Special Assessment Coordinator
Fiscal Services

Melvin J. Bullinger, P.E., City Engineer

Phone: 701-355-1505 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503

SE562 - UNIT 1





May 20, 2015

MEMORANDUM

To: Keith Hunke
Assistant City Administrator

From: Mel J. Bullinger, P.E.
City Engineer

A handwritten signature in blue ink, appearing to read "MJB", is written over the name "Mel J. Bullinger, P.E." in the "From:" line.

Re: AGENDA ITEM (SE 15-566)
Request for Resolution Creating District and Ordering Preparation of Preliminary Engineering Reports
Request for Resolution Approving Preliminary Reports and Directing the Preparation of Plans and Specifications
Request for Resolution Approving Plans and Specifications
Request for Authorization to Advertise and Receive Bids

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, May 26, 2015, at 5:15 p.m. in the Tom Baker Room.

Sewer Improvement District No. 15-566 consists of installation of local storm sewer, detention ponds and appurtenances (see attached map). The work will be funded through special assessments.

Authorization to Advertise:

Receipt of Bids:

Award:

May 26, 2015

June 22, 2015

June 23, 2015

MJB/ps

Enc.

cc: Keith Demke, P.E., Director of Utility Operations
Cora Bauer, Special Assessment Coordinator
Fiscal Services

Melvin J. Bullinger, P.E., City Engineer

Phone: 701-355-1505 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503

SE566 - UNIT 1




Bismarck

Engineering Department

May 20, 2015

MEMORANDUM

To: Keith Hunke
Assistant City Administrator

From: Mel J. Bullinger, P.E. 
City Engineer

Re: **AGENDA ITEM (WA 15-327)**
Request for Resolution Creating District and Ordering Preparation of the Preliminary Report
Request for Resolution Approving Preliminary Report and Directing Preparation of Plans and Specifications
Request for Resolution Approving Plans and Specifications
Request for Authorization to Advertise and Receive Bids

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, May 26, 2015, at 5:15 p.m. in the Tom Baker Room.

Water Improvement District No. 15-327 consists of construction of a 12-inch water main along Durango Drive from 275' west of Northern Sky Drive to 175' south of Medora Avenue. The work will be funded through special assessments.

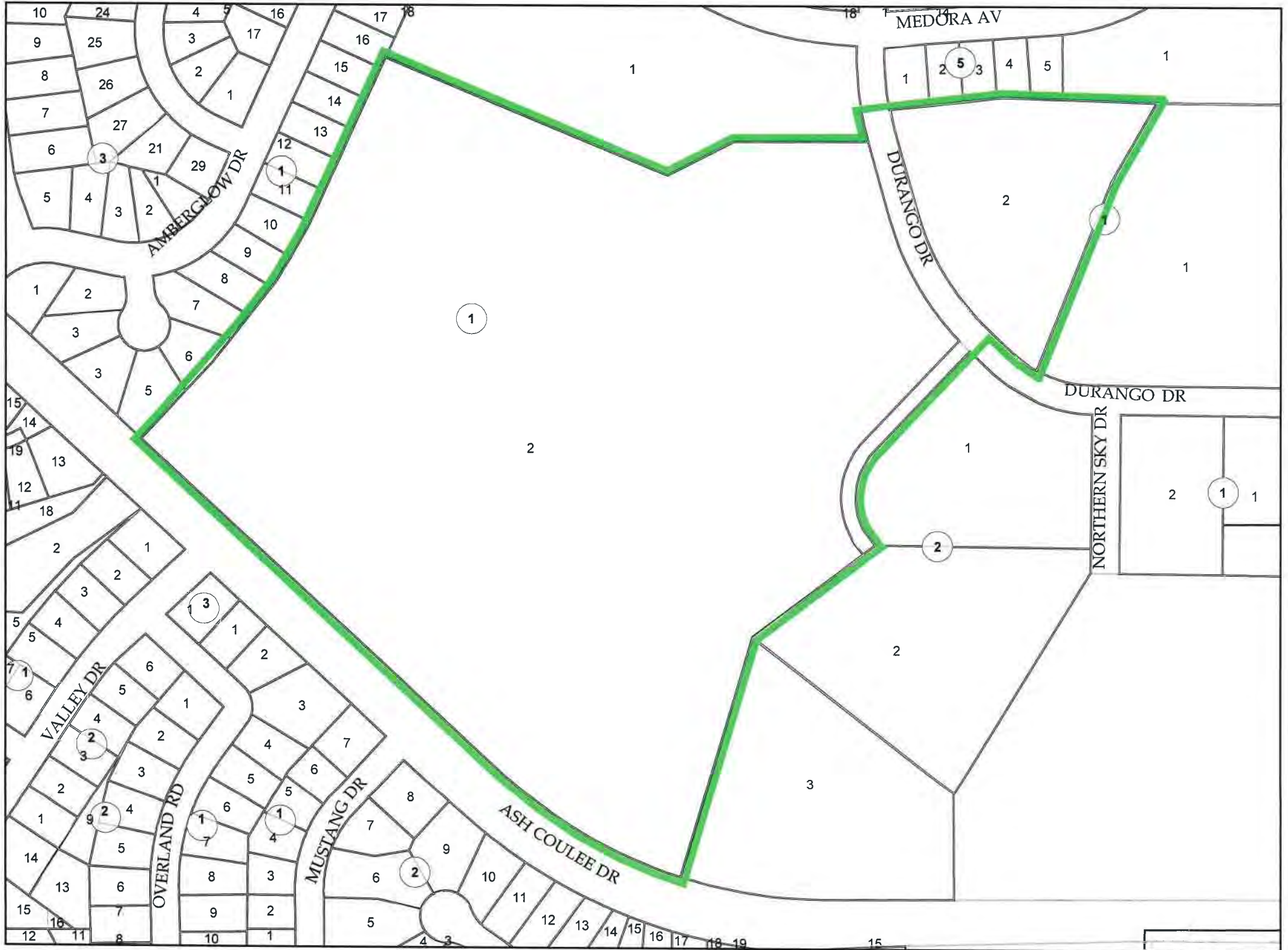
Authorization to Advertise:	May 26, 2015
Bid Opening:	June 15, 2015
Award:	June 23, 2015

MJB/ds
cc: Keith Demke, P.E., Director of Utility Operations
Cora Bauer, Special Assessment Coordinator
Fiscal Services

Melvin J. Bullinger, P.E., City Engineer

Phone: 701-355-1505 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503

WA327 - UNIT 1



CITY OF BISMARCK

Ordinance No. 6128

First Reading _____

Second Reading _____

Final Passage and Adoption _____

Publication Date _____

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 6-08-01, 6-08-02, 6-08-03 AND 6-08-05 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO WEAPONS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 6-08-01 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Definitions is hereby amended and re-enacted to read as follows:

6-08-01. Definitions. Where a term is used in this chapter, the meaning of that term as defined in Title 62.1 of the North Dakota Century Code, if that term is so defined, and as that Title may be amended from time to time, is hereby adopted by reference and incorporated herein.

Reference: N.D.C.C. Sec. 62.1-01-01 (1985)

Section 2. Amendment. Section 6-08-02 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Possession of Firearm at a Public Gathering is hereby amended and re-enacted to read as follows:

6-08-02. Possession of Firearm at Public Gathering.

1. A person who possesses a firearm at a public gathering is guilty of an offense. For the purpose of this section, "public gathering" ~~includes~~ means an athletic or sporting events; ~~schools or school functions; churches or church functions; political rallies or functions; musical concerts; and individuals in publicly owned parks,~~ a school, a church and a publicly owned or operated buildings.

2. This section does not apply to:

a. Law enforcement officers.

b. On-duty animal wardens employed by the City.

c. Members of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty.

d. Competitors participating in organized sport shooting events.

e. Gun and antique shows.

f. Participants using blank cartridge firearms at sporting or theatrical events.

g. Students and instructors at hunter safety classes.

h. or Private security personnel while on duty.

i. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question.

j. An individual in a publicly owned or operated rest area or restroom.

k. An individual possessing a valid class 1 concealed weapons license from this state or who has reciprocity under NDCC Section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship. If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual.

1. A municipal court judge, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

Reference: NDCC Sec. 62.1-02-05 (1985; Ord. 6041, 04-22-14)

Section 3. Amendment. Section 6-08-03 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Discharge of Firearm Within City Limits is hereby amended and re-enacted to read as follows:

6-08-03. Discharge of Firearm Within City Limits.

1. A person who discharges a firearm within the city limits is guilty of an offense.

2. This section does not apply to the lawful discharge of firearms by law enforcement officers, by on-duty animal wardens employed by the City, by citizens in defense of person or property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity, including shooting galleries or ranges.

Reference: NDCC Sec. 62.1-02-06 (1985; Ord. 6041, 04-22-14)

Section 4. Amendment. Section 6-08-05 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Loaded Firearm in Vehicle is hereby amended and re-enacted to read as follows:

6-08-05. Loaded Firearm in Vehicle.

~~1. A person who keeps or carries a loaded firearm in the passenger compartment of any motor vehicle~~ An individual may not keep or carry a loaded firearm in or on any motor vehicle, including an off - highway vehicle or snowmobile in this state. An individual violating this section is guilty of an offense.

2. This section does not apply to:

a. A member of the armed forces of the United States or National Guard, organized reserves, state defense forces, or state guard organization while in possession of a weapon issued to the member by the organization and while on official duty.

b. A law enforcement officer except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.

c. A person who possesses a valid ~~North Dakota~~ concealed weapons license from this state or who has reciprocity under section NDCC Section 62.1-04-03.1 with a handgun, or with a rifle or shotgun if not in the field hunting or trapping.

d. An individual in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.

~~ed.~~ A security guard properly licensed to carry ~~weapons firearms by the attorney general.~~

fe. A person who possesses a valid special permit issued pursuant to section 20.1-02-05, N.D.C.C.

Reference: NDCC Sec. 62.1-02-10 (1985)

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 6. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

CITY OF BISMARCK

Ordinance No. 6129

First Reading _____

Second Reading _____

Final Passage and Adoption _____

Publication Date _____

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 7-08-02 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO URBAN RENEWAL AND DOWNTOWN DEVELOPMENT.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 7-08-02 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Urban Renewal and Downtown Development is hereby amended and re-enacted to read as follows:

7-08-02. Urban Renewal and Downtown Development. The Board of City Commissioners may establish CORE Incentive Programs within the urban renewal area as part of a workable program to further the goals and objectives of an urban renewal plan adopted by the City. ~~The Bismarck Renaissance Zone Authority shall act as an urban renewal agency as defined by NDCC Section 40-58-16 for the purpose of holding public hearings as required by NDCC Section 40-58-06.~~ The Bismarck Renaissance Zone Authority may consider renewal plans submitted to it pursuant to the North Dakota Century Code or applications for the CORE Incentive Programs established by the Board of City Commissioners and shall forward its recommendations to the Board of City Commissioners. All ~~decisions~~ recommendations of the Bismarck Renaissance Zone Authority ~~acting as an urban renewal agency~~ regarding the CORE Incentive Program must be approved by the Board of City Commissioners. The Bismarck Renaissance Zone Authority may conduct design reviews as provided under City Ordinance Sections 14-04-21.1 and 14-04-21.2. A decision of the Bismarck Renaissance Zone Authority regarding design review shall be final. Any decision of the Renaissance Zone Authority regarding the CORE Incentive Program or design review are and subject to the appeal provisions of this chapter ~~Section 7-08-~~

~~01(2). Development or renewal plans relating to predominately commercial or industrial properties or amendments thereto need not be submitted to the City Planning and Zoning Commission unless the proposed plan or amendment is inconsistent with the City's comprehensive plan.~~

~~(Ord. 5159, 02-26-02; Ord. 5751, 12-08-09)~~

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

REGULAR AGENDA

**No attachment
for Regular
Agenda Item
*#3***

ITEM

#4

Memo

TO: Keith Hunke, Assistant City Administrator

FROM: Gary Stockert

SUBJECT: City Commission Agenda Item Request
Resolution to Adopt the 2015 Bismarck Multi-Hazard Mitigation Plan

DATE: May 14, 2015

Mr. Keith Hunke,

Please place this item, Resolution to Adopt the 2015 Bismarck Multi-Hazard Mitigation Plan, on the City Commission Agenda for May 26, 2015.

As a result of the extensive involvement and thorough planning efforts, we have developed a community specific plan to meet the needs of Bismarck which also met the planning recommendations and requirements of both the ND Department of Emergency Services and the Federal Emergency Management Agency. The 2015 Bismarck Multi-Hazard Mitigation Plan has been approved by the Federal Emergency Management Agency (FEMA) contingent upon local adoption of the mitigation plan.

The mitigation plan identifies hazards and hazard vulnerabilities as well as a mitigation strategy and specific mitigation actions for each of the hazards. The plan also identifies pre-existing mitigation projects and other actions already in place applicable to each of the hazards.

Public input is always welcome regarding the mitigation plan. The approved 2015 Bismarck Multi-Hazard Mitigation Plan will be made available via the city's website after the plan is adopted.

Attached is the resolution to adopt the 2015 Bismarck Multi-Hazard Mitigation Plan.

Thank you,



Gary Stockert

Emergency Manager, City of Bismarck

RESOLUTION

ADOPTING THE 2015 BISMARCK MULTI-HAZARD MITIGATION PLAN FOR THE CITY OF BISMARCK, ND

WHEREAS, the City of Bismarck has been and continues to be committed to the protection of life, property, and the environment from natural, technological, and human-caused hazards; and

WHEREAS, the City of Bismarck recognizes the threat that natural, technological, or human-caused hazards pose to people and property within the City; and

WHEREAS, the 2015 Bismarck Multi-Hazard Mitigation Plan is the result of an extensive planning effort coordinated by Bismarck Emergency Management in cooperation with governmental and non-governmental stakeholders to develop a community specific mitigation plan which identifies hazards that have the potential to impact the City and establish mitigation strategies to address these hazards; and

WHEREAS, Bismarck Emergency Management and applicable City departments will coordinate implementation of the plan and continue to engage stakeholders in the review and update of the plan; and

WHEREAS, an adopted Multi-Hazard Mitigation Plan is required as a condition of future funding for mitigation projects under multiple Federal Emergency Management Agency (FEMA) pre and post-disaster mitigation grant programs; and

WHEREAS, City of Bismarck, ND Department of Emergency Services, and Federal Emergency Management Agency Regional VIII officials have reviewed the 2015 Bismarck Multi-Hazard Mitigation Plan and have approved it contingent upon this official adoption of the plan by the Bismarck City Commission; and

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota, a municipal corporation, that the 2015 Bismarck Multi-Hazard Mitigation Plan as approved by FEMA is hereby **adopted** by the Bismarck City Commission as the City's Multi-Hazard Mitigation Plan

Adopted this 26th day of May, 2015.

STATE OF NORTH DAKOTA)
)ss
COUNTY OF BURLEIGH)

I, Keith J. Hunke, do hereby certify that I am the duly appointed, qualified Assistant City Administrator of the City of Bismarck, North Dakota, and that the foregoing is a full, true and correct

copy of a resolution adopted by the Board of City Commissioners at its regular meeting of May 26, 2015.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota, this 26th day of May, 2015.

(SEAL)

Keith J. Hunke
Assistant City Administrator
Bismarck, North Dakota



Multi-Hazard Mitigation Plan



Executive Summary

The City of Bismarck has developed a community specific 2015 Multi-Hazard Mitigation Plan (MHMP). The plan identifies and profiles the hazards to assess risk and vulnerability relating to natural, technological, and human-caused hazards, and identifies mitigation strategies and specific mitigation actions for reducing impact.

Throughout the planning process, Bismarck conducted a thorough analysis of each hazard including vulnerability assessments and identified new opportunities to mitigate each of the hazards. Additionally, various mitigation efforts and capabilities previously established are highlighted in plan sections 3 and 6.

Although emergencies and disasters have impacted Bismarck, and can impact Bismarck in the future, actions can be taken ahead of time to reduce or eliminate the negative impacts. The 2015 MHMP represents the City's commitment to take action to lessen the impacts potential disasters may have on life, the economy, infrastructure and our ability to continue to operate as a community and city.

Much of the work in hazard mitigation and sustainable development must be carried out at the local level. It is at the local level where land use decisions are made, growth and development take place, and where the impacts of hazards are most direct.

The major hazards as noted in the table below, are each profiled for the purpose of identifying our risk and significant vulnerabilities, and ultimately, to identify feasible mitigation opportunities.

Based on probability, potential impacts, and current response and mitigation capabilities, the hazards are prioritized as follows for the City of Bismarck:

	Natural Hazards	Technological or Human Caused
High	Winter Storm Tornado	
Moderate	Severe Summer Weather Flood Communicable Disease	Shortage or Outage of Critical Materials or Infrastructure; Hazardous Materials Release Train Derailment Active Shooter
Low	Biological Infestation: <i>Urban Forest</i> Drought Geologic Hazard Wildland Fire	Fire Dam Failure Aircraft Accident

The Bismarck Multi-Hazard Mitigation Plan identifies over 60 mitigation action items to enhance our status of mitigating all hazards. The plan also identifies over 150 mitigation measures already completed or integrated into Bismarck city departments as standard or on-going operations. For each hazard addressed in the plan, pre-existing mitigation is identified to illustrate the mitigation status of each hazard.

Some of the hazards with potential for catastrophic impact require that primary mitigation efforts be pursued by key partners including private industry, state and federal government. Based on combined mitigation and response capability status at the local, state, and national level, the most significant of these for the City of Bismarck would include Shortage or Outage of Critical Materials, Train Derailment (involving Fire and/or Hazardous Materials), and Dam Failure. Although likelihood of these potentially catastrophic incidents are considered of lower probability, they are possible.

Mitigation Strategy

The following purpose statement and goals are outlined in the plan's mitigation strategy:

Purpose: Minimize the vulnerability of the life and health of people, property, environment, and economy of Bismarck from the impacts of natural, technological, and human-caused hazards.

Protection of:

- Life
- Property and Environment
- Economy

Goal 1: Enhance local planning efforts related to hazard understanding and mitigation.

Goal 2: Enhance the public's awareness of hazards and participation in mitigation planning.

Goal 3: Reduce the impact future development has on potential losses and vulnerabilities.

Goal 4: Reduce impacts natural disasters may have on people and property.

Goal 5: Reduce impacts of technological and human-caused disaster may have on people and property.

Plan sections 2 through 6 outline the mitigation strategy and identify, prioritize, and assign the mitigation action items which support the multi-hazard mitigation plan purpose and goals. Plan Section 3 entitled "Hazard Vulnerability & Mitigation Actions Summary" provides for a summary of the hazard related vulnerabilities and mitigation action items by hazard name. The "Hazard Vulnerability & Mitigation Actions Summary" section also provides for a summary of the "pre-existing" hazard mitigation capabilities in place prior to the development of this plan.

ITEM

#5

CITY OF BISMARCK

Ordinance No. 6120

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 14-03-10 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO OFF-STREET PARKING AND LOADING.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-10 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Off-Street Parking and Loading is hereby amended and re-enacted to read as follows:

14-03-10. Off-Street Parking and Loading.

1. Applicability.

a. New Developments. The off-street parking, stacking and loading requirements of this section shall apply to any new building constructed and to any new use established.

b. Expansion and Alterations. The off-street parking, stacking and loading requirements of this section shall apply when an existing structure or use is expanded or enlarged. Additional off-street parking and loading spaces will be required only to serve the enlarged or expanded area. The parking, stacking and loading space provided for the existing use prior to the expansion or alteration may not be reduced.

c. Changes of Use. The off-street parking, stacking and loading requirements of this section shall apply to any change of use that would result in

a requirement for more parking, stacking or loading spaces than the existing use. Additional parking, stacking and loading spaces will be required only in proportion to the extent of the change, not for the entire building or use.

In the case of a change of use where the current use does not meet the minimum requirements for off-street parking, stacking and/or loading, and the proposed change of use would require less off-street parking, stacking or loading spaces than the current use, regardless of the number of spaces actually provided on the site, the Zoning Administrator may allow such change of use provided the off-street parking, stacking and loading for the new use is no less conforming than the current use.

12. Off-street parking. Except as provided elsewhere in this section, no application for a building permit or certificate of occupancy in any zone shall be approved unless there is included with the plan for such building improvement or use, a site plan showing the required space designated as being reserved for off-street parking purposes to be provided in connection with such building improvements or use in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided. Each required parking space shall be of an area at least nine (9) feet wide and eighteen (18) feet in length, in addition to the ingress and egress driveways required. All off-street parking spaces required and all driveways on private property leading to such parking areas shall be surfaced with a dustless all-weather hard surface material. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers or similar materials installed and maintained according to industry standards. Crushed rock or gravel shall not be considered an acceptable surfacing material. All parking areas containing four (4) or more spaces or containing angled parking shall have the parking spaces and aisles clearly marked on the pavement. The number of off-street parking spaces shall be provided on the basis of the following minimum requirements:

* * * * *

23. Off-street vehicle stacking. Except as provided elsewhere in this section, no application for a building

permit or certificate of occupancy for a commercial or industrial use shall be approved unless there is included with the plan for such building improvement or use, a site plan showing the required space designated as being reserved for off-street vehicle stacking purposes to be provided in connection with such building improvements or use in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided. Each required vehicle stacking space shall be of an area at least ten (10) feet wide and twenty (20) feet in length. Vehicle stacking lanes shall be located completely upon the parcel of land that includes the structure they are intended to serve and shall be so designed as to not impede on- or off-site traffic movements. All vehicle stacking spaces shall be surfaced with a dustless all-weather hard surface material. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers or similar materials installed and maintained according to industry standards. Crushed rock or gravel shall not be considered an acceptable surfacing material. The number of off-street vehicle stacking spaces shall be provided on the basis of the following minimum requirements:

* * * * *

34. Off-street loading. Except as provided elsewhere in this section, no application for a building permit or certificate of occupancy for a commercial or industrial use shall be approved unless there is included with the plan for such building improvement or use, a plot plan showing the required space or structural design for off-street loading purposes to be provided in connection with such building, improvement or use, in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided in accordance with those shown on the approved plan. Such off-street loading space shall be provided in accordance with the following minimum requirements:

* * * * *

45. Uses not specifically mentioned or unique situations. For any use not specifically mentioned in this section or in unique situations, the Zoning Administrator has the authority to modify the number of off-street parking spaces required based on the occupancy load. In

such cases, either the Zoning Administrator or the applicant for the certificate of occupancy or building permit may apply to the board of adjustment for an interpretation of the provisions of this article for such off-street parking and off-street loading requirements and the board of adjustment shall render a decision in writing in the manner provided for in this article for such action.

56. Continuing character of obligation. The schedule of requirements for off-street parking space and off-street loading space shall be a continuing obligation of the owner of the real estate on which any such structure is located as long as the structure is in existence and its use requiring vehicle parking or vehicle loading facilities continues. It shall be unlawful for an owner of any building affected by this section to discontinue, change or dispense with, or to cause the discontinuance or change of the required vehicle parking or loading spaces apart from the discontinuance, sale or transfer of such structure, without establishing alternative vehicle parking or loading space which meets with the requirements of and is in compliance with this section. It shall be unlawful for any firm or corporation to use such building without acquiring such land or other suitable land for vehicle parking or loading space which meets with the requirements of and is in compliance with this article.

67. Fractional measurements. When units or measurements determining number of required off-street parking and off-street loading spaces result in the requirements of a fractional space, any fraction up to and including one-fourth shall be disregarded, and fractions over one-fourth shall require one off-street parking or off-street loading space.

78. Off-street parking and loading requirements in certain zoning districts. In that section of the city described as follows: Commencing at the intersection of the east line of Ninth Street and Thayer Avenue; thence south on Ninth Street to a point one hundred fifty feet south of the south boundary line of Main Avenue being the center line of the Burlington Northern Railway Company right-of-way; thence west along the said center line of the Burlington Northern Railway Company right-of-way to the west line of Seventh Street extended; thence south to the center line of Bowen Avenue; thence west along the center line of Bowen Avenue to Fifth Street; thence north along

the center line of Fifth Street to Front Avenue; thence west along the center line of Front Avenue to Third Street; thence north on Third Street one hundred fifty feet to the center line of the Burlington Northern Railway Company right-of-way; thence west along the center line of the Burlington Northern Railway Company right-of-way to the east line of Washington Street extended; thence north along the east line of Washington Street to the northwest corner of Lot 24, Block 84, Original Plat; thence east from the northwest corner of Lot 24, Block 84, Original Plat to the southwest corner of Lot 6, Block 84, Original Plat; thence north from the southwest corner of Lot 6, Block 84, Original Plat to the south line of Thayer Avenue; thence east along the south line of Thayer Avenue to the east line of Mandan Street; thence north along the east line of Mandan Street to the south line of Rosser Avenue; thence east along the south line of Rosser Avenue to the east line of First Street; thence south along the east line of First Street to the northwest corner of Lot 18, Block 110, Original Plat; thence east from this point to the east line of Second Street; thence north along the east line of Second Street to the south line of Rosser Avenue; thence east along the south line of Rosser Avenue to the east line of Third Street; thence north along the east line of Third Street to the south line of Avenue A; thence east along the south line of Avenue A to the east line of Lot 4, Block 26, Northern Pacific Second Addition; thence south from this point along the center line of Block 26, Northern Pacific Second Addition and Block 126, Original Plat to the south line of Rosser Avenue; thence east along the south line of Rosser Avenue to the west line of Eighth Street; thence south along the west line of Eighth Street to the south line of Thayer Avenue; thence east along the south line of Thayer Avenue to the point of beginning, the following off-street parking provisions shall apply:

* * * * *

89. Location of required parking and loading facilities. The off-street parking facilities required by this section shall be on the same lot or parcel of land as the structure they are intended to serve; provided, however, when practical difficulties, prevent the establishment of such facilities upon the same lot or parcel, they shall be furnished within four hundred feet (400) of the premises to which they are appurtenant. Off-site parking lots within residential areas are subject to

the requirements of Section 14-03-08(4)(x). The off-street loading facilities required by this section shall in all cases be on the same lot or parcel of land as the structure they are intended to serve. In no case shall the required off-street loading space be part of the area used to satisfy the off-street parking requirements of this article. All required off-street parking and loading facilities along with all ingress and egress driveways thereto shall be zoned appropriately for the principal use which they are intended to serve.

~~9~~10. Plan of required off-street parking or loading areas. For the purpose of converting parking or loading spaces into the required parking or loading area, plans must be submitted to the Zoning Administrator to show how the required parking or loading space shall be arranged in the area supplied for that purpose and to indicate sufficient space for parking maneuvers, as well as adequate ingress and egress to the parking or loading area. For each parking space, not under roof, there shall be provided additional area for lanes, alleys, aisles and drives necessary for safe and adequate parking maneuvering. For each off-street loading space required by this section there shall be provided space clear and free of all obstructions, at least ten (10) feet in width, fifty feet (50) feet in length and fourteen (14) feet in height. Off-street parking and off-street loading space shall be provided with methods of ingress and egress such that it will be unnecessary for trucks or tractor-trailer combinations to back into them from a street or out of them into a street.

~~10~~11. Use of required off-street parking by another building. No part of an off-street parking area required for any building or use for the purpose of complying with the provisions of this section shall be included as a part of an off-street parking area similarly required for another building or use unless the type of structure indicates that the periods of usage for such structures will not be simultaneous with each other, as determined by the board of adjustment.

~~11~~12. Maintenance of public off-street parking places provided. All off-street parking facilities for the use of the public required pursuant to the provisions of this section shall be paved, drained, lighted and periodically maintained by the owner in accordance with

specifications of the city engineer, and such facilities shall be arranged for convenient access and safety of pedestrians and vehicles. No open area in an off-street parking area shall be encroached upon by buildings, storage or any other use; nor shall the number of parking spaces be reduced except upon the approval of the board of adjustment and then only after proof that, by reason of diminution of floor space, seating capacity, number of employees, or change in other factors controlling the regulation of the number of parking spaces, the proposed reduction is reasonable and consistent with the intent of this section.

~~12~~13. Collective action relative to off-street parking and loading. Nothing in this title shall be construed to prevent the joint use of off-street parking or off-street loading space for two or more buildings or uses, if the total of such spaces when used together shall not be less than the sum of the requirements for the various individual uses computed separately in accordance with this section.

~~13~~14. Mixed uses. In the case of mixed uses, except as provided for in subsection 1(h)(2) of this section for a multi-tenant shopping center, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified in subsections 1 and 2 of this section, and the off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use.

~~14~~15. Nonconforming uses. In the case of nonconforming uses where major repairs, substantial alterations or extensions are made, no such major repairs, substantial alterations or extensions shall be permitted unless and until the off-street parking and off-street loading facility space requirements of this section, so far as they apply to the use to which such building is devoted, shall be fully provided for. Provided, however, this item shall not apply to the rebuilding of nonconforming uses that are being rebuilt according to section 14-03-09 of the zoning ordinance, or to structures located upon lots in districts being assessed for city-operated parking lots.

~~15~~16. Vacant lots. Vacant lots may be used for temporary off-street parking purposes if they meet the following criteria:

* * * * *

(Ord. 4117, 12-30-86; Ord. 4213, 8-02-88; Ord. 4323, 4-24-90; Ord. 4236, 1-17-89; Ord. 4325 and 4326, 4-24-90 & 5-01-90; Ord. 4333, 6-05-90; Ord. 4332, 6-05-90; Ord. 4336, 7-31-90; Ord. 4770, 06-25-96; Ord. 4821, 02-25-97; Ord. 4863, 08-12-97; Ord. 4936, 09-08-98; Ord. 5206, 10-08-02; Ord. 5207, 10-08-02; Ord. 5247, 04-22-03; Ord. 5295, 02-24-04; Ord. 5501, 04-25-06; Ord. 5527, 06-27-06; Ord. 5693, 09-23-08; Ord. 5728, 05-26-09; Ord. 5852, 11-22-11; Ord. 6028, 01-28-14; Ord. 6040, 04-22-14; Ord. 6043, 04-22-14; Ord. 6050, 05-27-14)

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

ITEM

#6

CITY OF BISMARCK

Ordinance No. 6121

First Reading _____

Second Reading _____

Final Passage and Adoption _____

Publication Date _____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-08 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO SPECIAL USES.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Special Uses is hereby amended and re-enacted to read as follows:

14-03-08. Special Uses. In order to carry out the purposes of this title, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city planning and zoning commission and by the Zoning Administrator (where allowed) prior to the granting of a building permit or certificate of occupancy and that the city planning and zoning commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to the granting of such permit or certificate.

* * * * *

2. Temporary uses (administrative approval). The Zoning Administrator is authorized to grant permits for certain temporary uses without a public hearing or approval of the city planning and zoning commission. All temporary structures used for the following uses shall be removed within fifteen days after termination of the use. The following are temporary uses to which such regulations apply:

* * * * *

f. For temporary retail sales in a CA, CG, CR or MA district for a period not to exceed sixty (60) days.

fg. For a show, circus, menagerie or carnival in a CA, CR, CG, MA, MB, A or P Zone for a period of no more than ten days provided that proof of a bond or liability insurance as required by City Ordinance 5-03-08 is provided prior to the first day of the event and that no less than thirty days prior to the first day of the event the applicant shall submit an application for the event to the Zoning Administrator. Such application shall be accompanied by a fee, as established by the City, for each day of the event which shall be in addition to any other license or inspection fees, and a site plan of the event showing at least the following details:

* * * * *

(Ord. 4136, 4-28-87; Ord. 4286, 08-22-89; Ord. 4312, 2-20-90; Ord. 4331, 6-05-90; Ord. 4425, 03-31-92; Ord. 4486, 04-27-93; Ord. 4563, 12-07-93; Ord. 4564, 11-23-93; Ord. 4598, 04-28-94; Ord. 4598, 04-28-94; Ord. 4620, 07-19-94; Ord. 4702, 06-13-95; Ord. 4713, 08-22-95; Ord. 4738, 11-14-95; Ord. 4739, 11-14-95; Ord. 4745, 02-13-96; Ord. 4802, 11-12-96; Ord. 4808, 11-12-96; Ord. 4912, 07-14-98; Ord. 4913, 06-09-98; Ord. 4936, 09-08-98; Ord. 4946, 10-27-98; Ord. 5027, 02-08-00; Ord. 5214, 11-12-02; Ord. 5218, 11-26-02; 5224, 12-17-02; Ord. 5228, 01-28-03; Ord. 5278, 09-23-03; Ord. 5317, 06-22-04; Ord. 5343, 06-22-04; Ord. 5348, 07-27-04; Ord. 5351, 08-24-04; Ord. 5438, 06-28-05; Ord. 5467, 10-25-05; Ord. 5527, 06-27-06; Ord. 5719, 05-12-09; Ord. 5728, 05-26-09; Ord. 5764, 01-12-10; Ord. 5820, 4-26-11; Ord. 5852, 11-22-11; Ord. 5958, 03-26-13; Ord. 6028, 01-28-14; Ord. 6040, 04-22-14; Ord. 6050; 05-27-14, corrected 06-10-14);

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

ITEM

#7

CITY OF BISMARCK

Ordinance No. 6122

First Reading _____

Second Reading _____

Final Passage and Adoption _____

Publication Date _____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-08 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO SPECIAL USES.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Special Uses is hereby amended and re-enacted to read as follows:

14-03-08. Special Uses. In order to carry out the purposes of this title, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city planning and zoning commission and by the Zoning Administrator (where allowed) prior to the granting of a building permit or certificate of occupancy and that the city planning and zoning commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to the granting of such permit or certificate.

* * * * *

4. Permanent uses (planning and zoning commission approval). The city planning and zoning commission is authorized to grant special use permits for the following uses:

* * * * *

g. Drive-in/drive-through retail or service establishments. An establishment dispensing goods at retail or providing services through a drive-in/drive-

through facility, including, but not limited to drive-in/drive-through restaurants, banks or other drive-in/drive-through facilities, exclusive of theatres, may be permitted in a CG, CR, MA or HM district (drive-in/drive-through facilities for banks and drive-in/drive-through windows for pharmacies as an ancillary use to a medical office/clinic only may also be permitted in a CA district) as a special use provided:

1. The lot area, lot width, front yard, side yards, rear yard, floor area and height limit of the structure and its appurtenances shall conform to the requirements of the district in which it is located.

2. Access to and egress from a drive-in/drive-through establishment shall be arranged for the free flow of vehicles at all times, so as to prevent the blocking or endangering of vehicular or pedestrian traffic through the stopping or standing or backing of vehicles on sidewalks or streets.

* * * * *

(Ord. 4136, 4-28-87; Ord. 4286, 08-22-89; Ord. 4312, 2-20-90; Ord. 4331, 6-05-90; Ord. 4425, 03-31-92; Ord. 4486, 04-27-93; Ord. 4563, 12-07-93; Ord. 4564, 11-23-93; Ord. 4598, 04-28-94; Ord. 4598, 04-28-94; Ord. 4620, 07-19-94; Ord. 4702, 06-13-95; Ord. 4713, 08-22-95; Ord. 4738, 11-14-95; Ord. 4739, 11-14-95; Ord. 4745, 02-13-96; Ord. 4802, 11-12-96; Ord. 4808, 11-12-96; Ord. 4912, 07-14-98; Ord. 4913, 06-09-98; Ord. 4936, 09-08-98; Ord. 4946, 10-27-98; Ord. 5027, 02-08-00; Ord. 5214, 11-12-02; Ord. 5218, 11-26-02; 5224, 12-17-02; Ord. 5228, 01-28-03; Ord. 5278, 09-23-03; Ord. 5317, 06-22-04; Ord. 5343, 06-22-04; Ord. 5348, 07-27-04; Ord. 5351, 08-24-04; Ord. 5438, 06-28-05; Ord. 5467, 10-25-05; Ord. 5527, 06-27-06; Ord. 5719, 05-12-09; Ord. 5728, 05-26-09; Ord. 5764, 01-12-10; Ord. 5820, 4-26-11; Ord. 5852, 11-22-11; Ord. 5958, 03-26-13; Ord. 6028, 01-28-14; Ord. 6040, 04-22-14; Ord. 6050; 05-27-14, corrected 06-10-14);

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

ITEM

#8

CITY OF BISMARCK

Ordinance No. 6123

First Reading _____

Second Reading _____

Final Passage and Adoption _____

Publication Date _____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-04-13 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO THE CR COMMERCIAL DISTRICT.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-04-13 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to the CR Commercial District is hereby amended and re-enacted to read as follows:

14-04-13. CR Commercial District.

1. General description. The CR commercial district is established as a district in which the principal use of the land is for regional shopping centers and related services. For the CR commercial district in promoting the general purposes of this article, the specific intent of this section is:

* * * * *

8. Off-street parking. Off-street parking and loading shall be provided ~~in an amount equivalent to five (5) spaces per thousand (1,000) square feet of gross leasable area. Where minimum setbacks occur, no parking shall be allowed between a building and an adjacent street in accordance with the provisions of Section 14-03-10 of this Title.~~ A site circulation plan shall be prepared by the shopping center and approved by the Zoning Administrator.

(Ord. 4462, 08-18-92; Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4808, 11-12-96; Ord. 5027, 02-08-00; Ord. 5728, 05-26-09; Ord. 5958, 03-26-13; Ord. 6028, 01-28-14; Ord. 6040, 04-22-14)

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

ITEM

#9

ORDINANCE NO. 6124

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE ANNEXING PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF BISMARCK, NORTH DAKOTA, DECLARING THE TERRITORY ANNEXED; DECLARING THE SAME TO BE A PART OF THE CORPORATE LIMITS OF SAID CITY.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA.

Section 1. Territory Annexed. The territory and land hereinafter described is hereby declared and found to be a part of the corporate limits of the City of Bismarck, North Dakota, as follows:

Lots 1-13, Block 2, Lots 2-7, Block 4 and Lots 1-4, Block 5, Eagle Crest Fourth Addition.

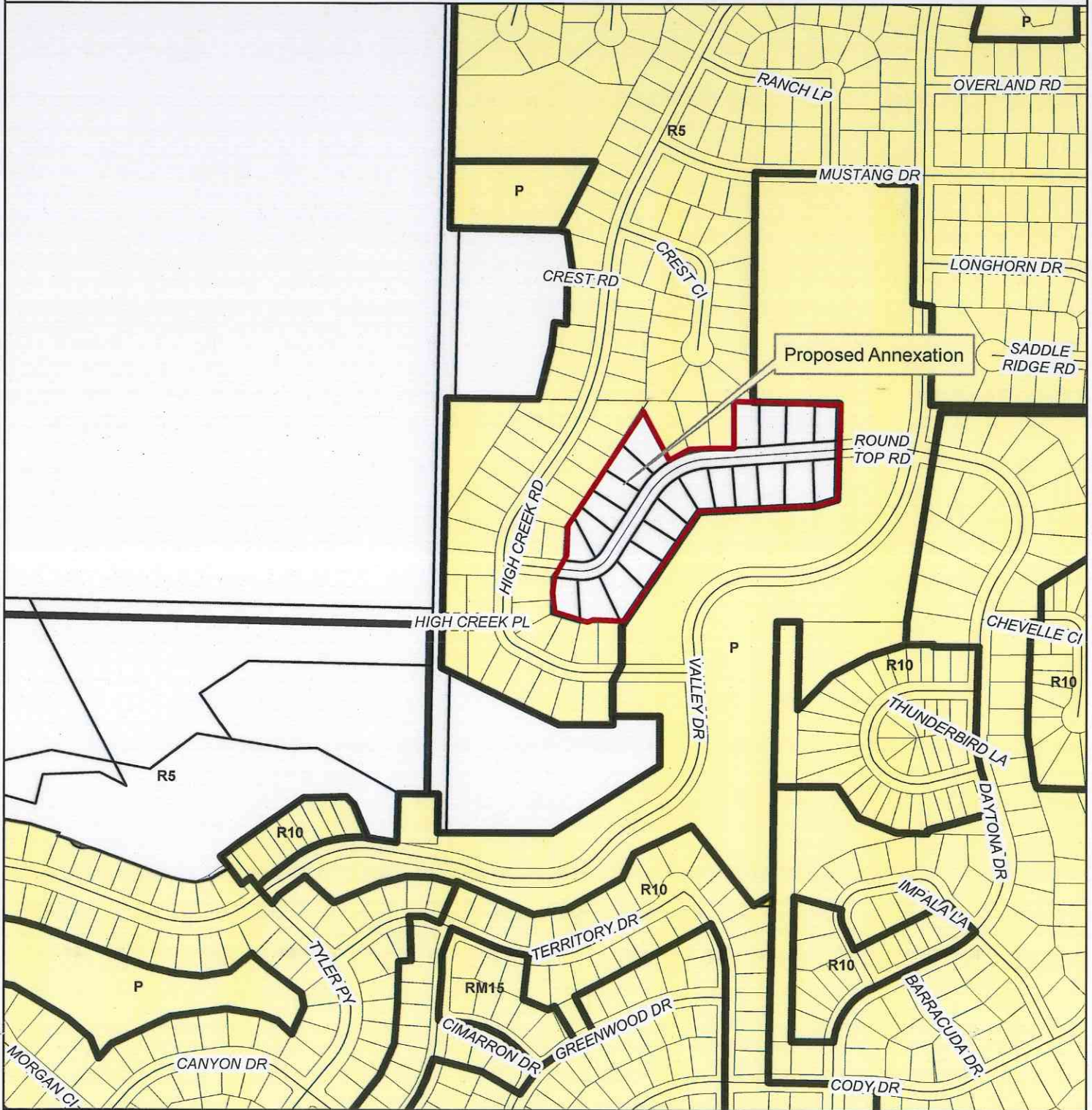
The above described tract of land contains 9.90 acres, more or less.

Section 2. Provisions Applicable. From and after the final passage and adoption of this Ordinance and upon recording of this ordinance with the Burleigh County Recorder, the territory herein described shall be a part of the corporate limits of the City of Bismarck, North Dakota.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

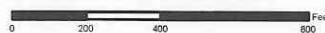
BACKGROUND:		
Title: Lots 1-13, Block 2, Lots 2-7, Block 4, and Lots 1-4, Block 5, Eagle Crest Fourth Addition – Annexation		
Status: Board of City Commissioners	Date: May 12, 2015	
Owner(s): Greg & Melissa Feser – L9, B2 Michael & Linda Schoepp – L2, B4 Knutson Estates, LTD – remainder	Engineer: Swenson Hagen & Co.	
Reason for Request: Annex previously platted & zoned property for single-family residential development.		
Location: In northwest Bismarck, along both sides of Round Top Road, west of Valley Drive.		
Project Size: 9.90 acres, more or less	Number of Lots: 22 lots in 3 blocks	
EXISTING CONDITIONS:		
Land Use: Undeveloped	PROPOSED CONDITIONS:	
Zoning: R5 – Residential	Land Use: Single-family residential	
Uses Allowed: Single-family residential	Zoning: R5 – Residential	
Maximum Density Allowed: 5 units/acre	Uses Allowed: Single-family residential	
PROPERTY HISTORY:		
Zoned: 08/2011	Platted: 08/2011	Annexed: N/A
FINDINGS:		
<ol style="list-style-type: none"> 1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation at the time of development. 2. The proposed annexation would not adversely affect property in the vicinity. 3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance. 4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice. 		
RECOMMENDATION:		
<p>The Planning & Zoning Commission held final consideration on this request on Wednesday, April 29, 2015, and based on the above findings, recommended approval of the annexation of that portion of Eagle Crest 4th Addition not previously annexed (Lots 1-13, Block 2, Lots 2-7, Block 4, and Lots 1-4, Block 5).</p> <p style="text-align: right; margin-top: 100px;">/Klee</p>		

Proposed Annexation
Lots 1-13, Block 2, Lots 2-7, Block 4 and Lots 1-4, Block 5
Eagle Crest 4th Addition



March 5, 2015 (hlb)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



ITEM

#10

ORDINANCE NO. 6125

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE ANNEXING PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF BISMARCK, NORTH DAKOTA, DECLARING THE TERRITORY ANNEXED; DECLARING THE SAME TO BE A PART OF THE CORPORATE LIMITS OF SAID CITY.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA.

Section 1. Territory Annexed. The territory and land hereinafter described is hereby declared and found to be a part of the corporate limits of the City of Bismarck, North Dakota, as follows:

Lot 2, Block 1 and all of the Northern Sky Drive right-of-way adjacent to Lot 2, Block 1, Northern Sky Addition.

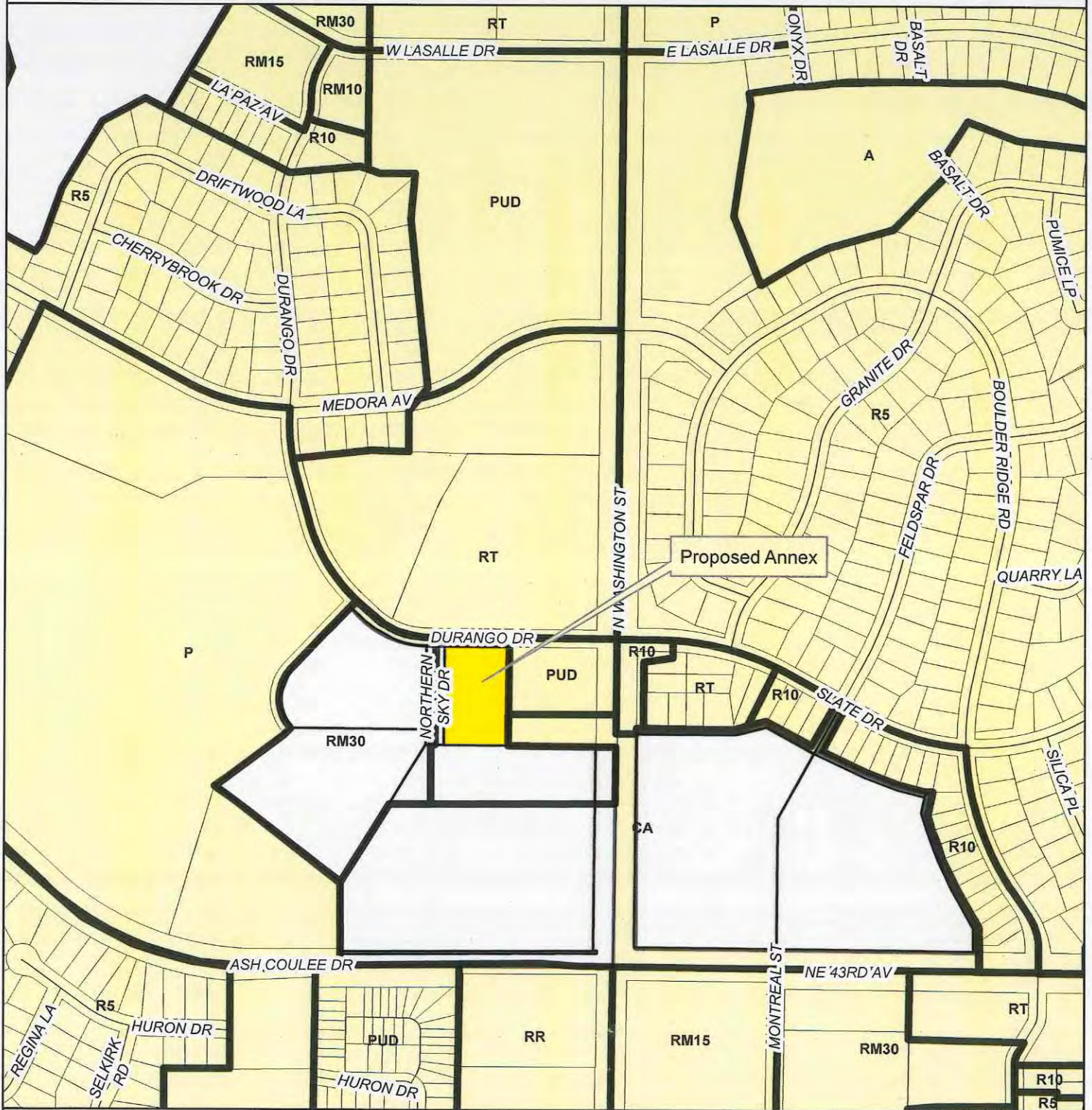
The above described tract of land contains 3.18 acres, more or less.

Section 2. Provisions Applicable. From and after the final passage and adoption of this Ordinance and upon recording of this ordinance with the Burleigh County Recorder, the territory herein described shall be a part of the corporate limits of the City of Bismarck, North Dakota.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:		
Title: Lot 2, Block 1 and all of the Northern Sky Drive right-of-way adjacent to Lot 2, Block 1, Northern Sky Addition – Annexation		
Status: Board of City Commissioners	Date: May 12, 2015	
Owner(s): Wilment Properties, LLC	Engineer: Swenson, Hagen & Co.	
Reason for Request: Annex previously platted and zoned lot along with adjacent right-of-way for neighborhood commercial development.		
Location: In northwest Bismarck, along the south side of Durango Drive, west of North Washington Street.		
Project Size: 3.18 acres, more or less	Number of Lots: 1 lot and all of the adjacent right-of-way	
EXISTING CONDITIONS:		
Land Use: Undeveloped	PROPOSED CONDITIONS:	
Land Use: Light commercial and office uses		
Zoning: CA – Commercial	Zoning: CA – Commercial	
Uses Allowed: Limited commercial uses, offices and multi-family residential	Uses Allowed: Limited commercial uses, offices and multi-family residential	
Maximum Density Allowed: 30 units per acre	Maximum Density Allowed: 30 units per acre	
PROPERTY HISTORY:		
Zoned: 08/2012	Platted: 08/2012	Annexed: N/A
FINDINGS:		
<ol style="list-style-type: none"> 1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation at the time of development. 2. The proposed annexation would not adversely affect property in the vicinity. 3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance. 4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice. 		
RECOMMENDATION:		
<p>The Planning & Zoning Commission held final consideration on this request on Wednesday, April 29, 2015, and based on the above findings, recommended approval of the annexation of Lot 2, Block 1 and all of the Northern Sky Drive right-of-way adjacent to Lot 2, Block 1, Northern Sky Addition.</p>		
/Klee		

Proposed Annexation Lot 2, Block 1, Northern Sky Addition



March 30, 2015 (h1b)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



ITEM

#11

ORDINANCE NO. 6126

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE ANNEXING PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF BISMARCK, NORTH DAKOTA, DECLARING THE TERRITORY ANNEXED; DECLARING THE SAME TO BE A PART OF THE CORPORATE LIMITS OF SAID CITY.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA.

Section 1. Territory Annexed. The territory and land hereinafter described is hereby declared and found to be a part of the corporate limits of the City of Bismarck, North Dakota, as follows:

Tract 9 of Tracts 7 and 8 and Tract 10 of Tract 7 of Tract C of Zoller's Subdivision.

The above described tract of land contains 6.30 acres, more or less.

Section 2. Provisions Applicable. From and after the final passage and adoption of this Ordinance and upon recording of this ordinance with the Burleigh County Recorder, the territory herein described shall be a part of the corporate limits of the City of Bismarck, North Dakota.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

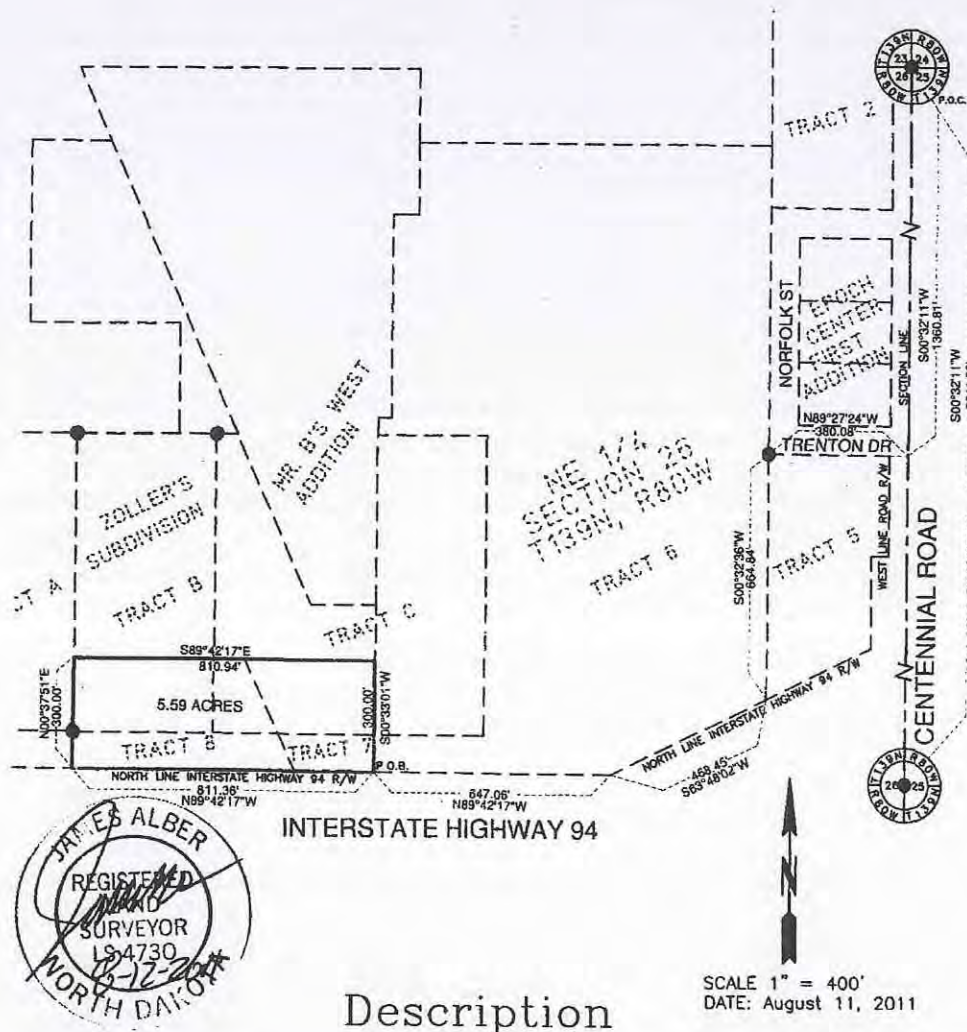
BACKGROUND:		
Title: Tract 9 of Tracts 7 and 8 and Tract 10 of Tract 7 of Tract C of Zoller's Subdivision – Annexation		
Status: Board of City Commissioners	Date: May 12, 2015	
Owner(s): City of Bismarck	Engineer: N/A	
Reason for Request: Annex recently acquired City-owned parcels used for storm water management.		
Location: Along the north side of Interstate 94, west of Centennial Road.		
Project Size: 6.30 acres, more or less	Number of Lots: 2 parcels	
EXISTING CONDITIONS:		
Land Use: Storm water management	PROPOSED CONDITIONS:	
Zoning: RMH – Residential	Land Use: Storm water management	
Uses Allowed: Manufactured home park	Zoning: RMH – Residential	
Maximum Density Allowed: 7 families per net acre	Uses Allowed: Manufactured home park	
	Maximum Density Allowed: 7 families per net acre	
PROPERTY HISTORY:		
Zoned: 07/1977	Platted: 11/1964 (Zoller's)	Annexed: N/A
FINDINGS:		
<ol style="list-style-type: none"> 1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation at the time of development. 2. The proposed annexation would not adversely affect property in the vicinity. 3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance. 4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice. 		
RECOMMENDATION:		
<p>The Planning & Zoning Commission held final consideration on this request on Wednesday, April 29, 2015, and based on the above findings, recommended approval of the annexation of Tract 9 of Tracts 7 and 8 and Tract 10 of Tract 7 of Tract C of Zoller's Subdivision in the NE ¼ of Section 26, T139N-R80W/Hay Creek Township.</p>		

/Klee

PLAT OF

TRACT 9 in the NE1/4 Section 26 Township 139 Range 80

Present Owner Real Properties, LLC



Description

TRACT 9 (of) Northeast Quarter Section 26 Township 139

Range 80 described as follows:

31-139.80-00-26270

That part of Tract 7 and Tract 8 of the Northeast Quarter of Section 26, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota being further described as follows:

Commencing at the northeast corner of said Northeast Quarter; thence South 00 degrees 32 minutes 11 seconds West on the east line of said Northeast Quarter for a distance of 1360.81 feet to the eastern extension of the north line of Tract 5 of said Northeast Quarter; thence North 89 degrees 27 minutes 24 seconds West on the north line and said eastern extension for a distance of 380.08 feet to the northwest corner of said Tract 5 and the east line of Tract 6 in said Northeast Quarter; thence South 00 degrees 32 minutes 38 seconds West on said east line for a distance of 664.84 feet to the southeast corner of said Tract 6; thence South 63 degrees 48 minutes 02 seconds West on the south line of said Tract 6 for a distance of 468.45 feet; thence North 89 degrees 42 minutes 17 seconds West on said south line for a distance of 647.06 feet to the southern extension of the east line of MR. B'S WEST ADDITION to the City of Bismarck and the point of beginning; thence continuing North 89 degrees 42 minutes 17 seconds West for a distance of 811.36 feet to the southern extension of the west line of said Tract 6; thence North 00 degrees 37 minutes 51 seconds East on the west line and said southern extension for a distance of 300.00 feet; thence South 89 degrees 42 minutes 17 seconds East for a distance of 810.94 feet to the southern extension of the east line or said Mr. B's West Addition; thence South 00 degrees 33 minutes 01 second West on said southern extension for a distance of 300.00 feet to the point of beginning.

Containing 5.59 acres, more or less.



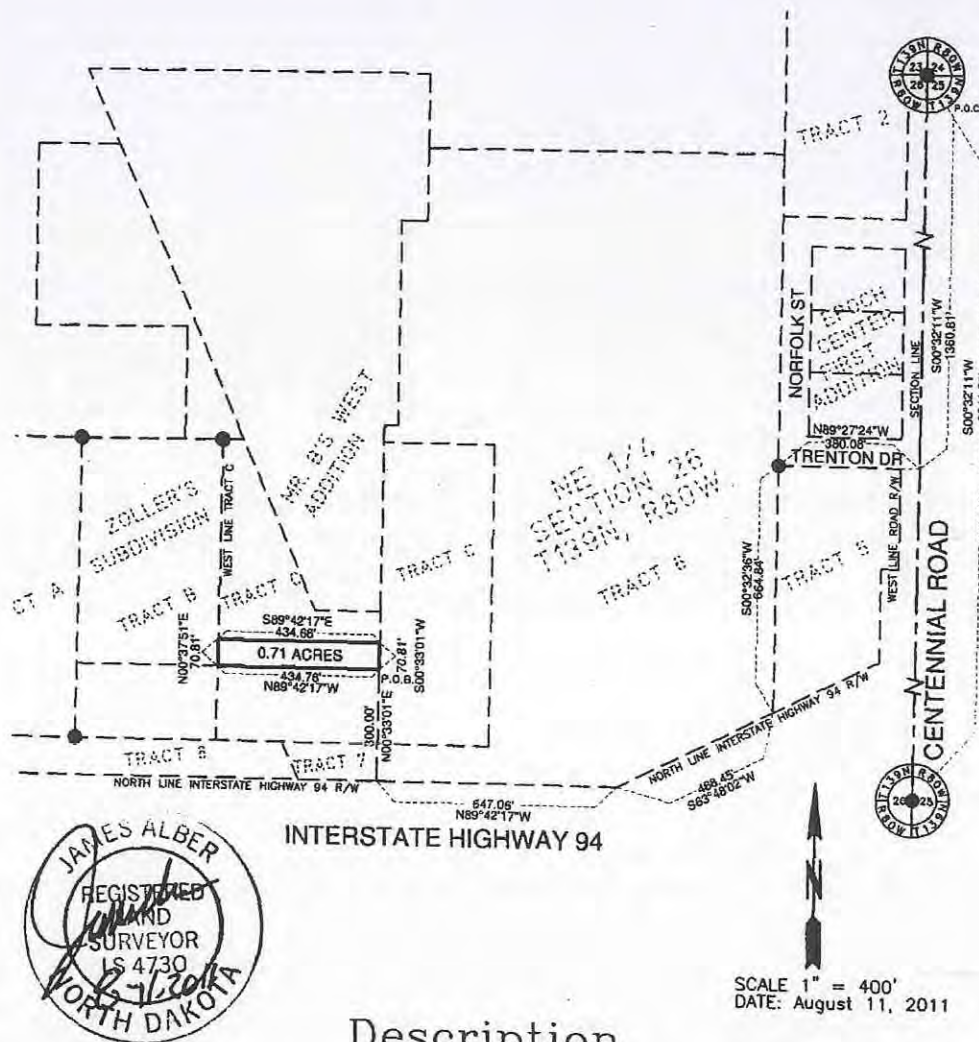
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Page: 1 of 2
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Burleigh County

PLAT OF

TRACT 10 in the NE1/4 Section 26 Township 139 Range 80

Present Owner Real Properties, LLC



Description

TRACT 10 (of) Northeast Quarter Section 26 Township 139

Range 80 described as follows:

31-139-80-0026 272

That part of Tract C of ZOLLER'S SUBDIVISION of the Northeast Quarter of Section 26, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being further described as follows:

Commencing at the northeast corner of said Northeast Quarter; thence South 00 degrees 32 minutes 11 seconds West on the east line of said Northeast Quarter for a distance of 1360.81 feet to the eastern extension of the north line of Tract 5 of said Northeast Quarter; thence North 89 degrees 27 minutes 24 seconds West on the north line and said eastern extension for a distance of 380.08 feet to the northwest corner of said Tract 5 and the east line of Tract 6 in said Northeast Quarter; thence South 00 degrees 32 minutes 36 seconds West on said east line for a distance of 664.84 feet to the southeast corner of said Tract 6; thence South 63 degrees 48 minutes 02 seconds West on the south line of said Tract 6 for a distance of 468.45 feet; thence North 89 degrees 42 minutes 17 seconds West on said south line for a distance of 647.06 feet to the southern extension of the east line of MR. B'S WEST ADDITION to the City of Bismarck; thence North 00 degrees 33 minutes 01 seconds East on the east line and said southern extension for a distance of 300.00 feet to point of beginning; thence North 89 degrees 42 minutes 17 seconds West to the west line of Tract C for a distance of 434.76 feet; thence North 00 degrees 37 minutes 51 seconds East on said west line of Tract C for a distance of 70.81 feet; thence South 89 degrees 42 minutes 17 seconds East to the southerly extension of the east line of said MR. B'S WEST ADDITION for a distance of 434.66 feet; thence South 00 degrees 33 minutes 01 seconds West on said east line for a distance of 70.81 feet to the point of beginning.

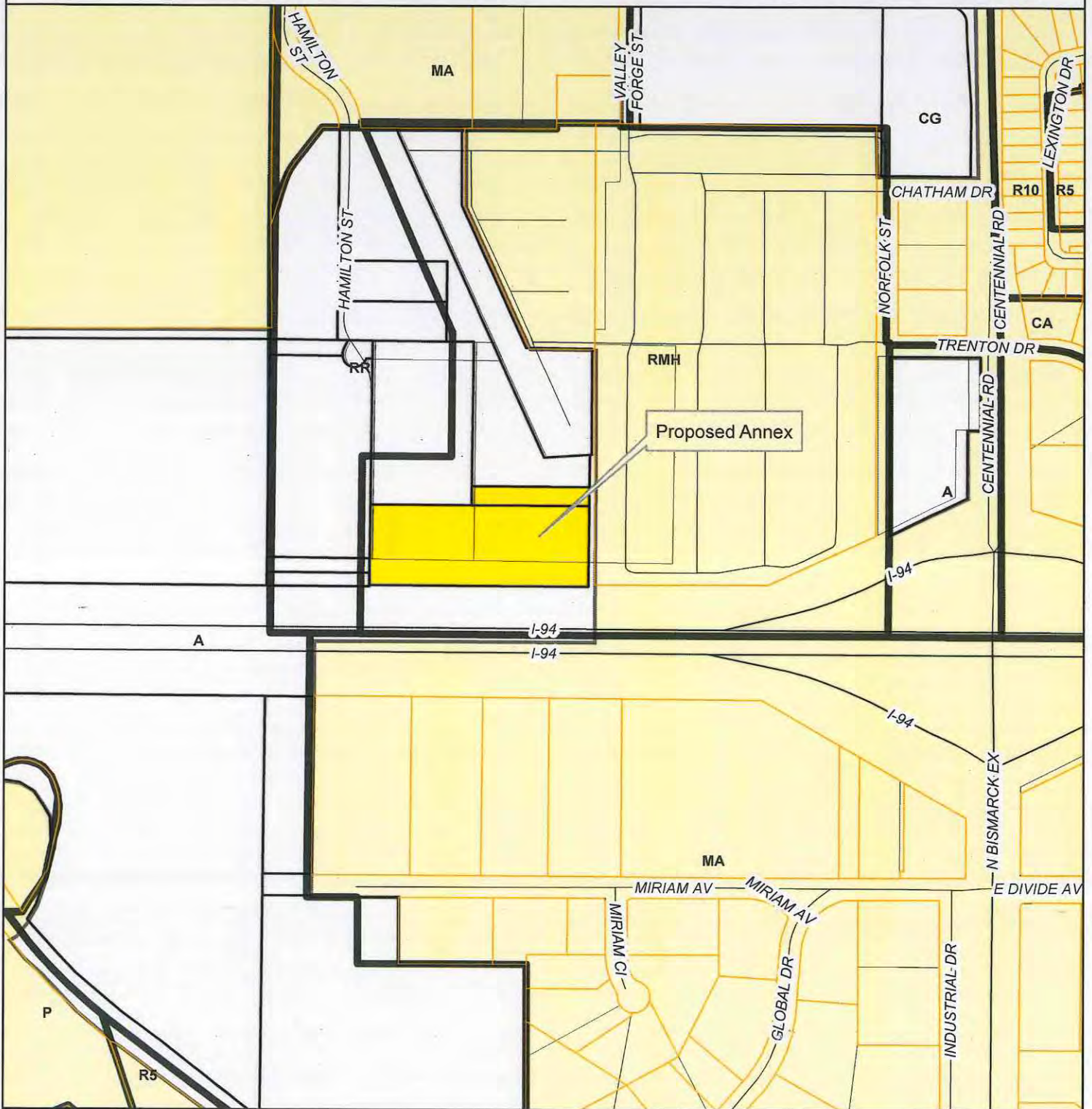
Containing 0.71 acres, more or less.



749331

\$13.00
Page: 1 of 2
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Proposed Annexation
Tracts 9 and 10 (of Tract 7) of Tract C, Zoller's Subdivision
(Part of the NE1/4 of Section 26, T139N-R80W/Hay Creek Township)



March 5, 2015 (hlb)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

0 200 400 800 Feet



ITEM

#12

ORDINANCE NO. 6127

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the A-Agriculture and MA-Industrial zoning districts and included in the MA-Industrial zoning district:

Metro Industrial Park Third Subdivision.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:		
Title: Metro Industrial Park Third Subdivision – Zoning Change (A & MA to MA)		
Status: Board of City Commissioners	Date: May 12, 2015	
Owner(s): Leona McDonald & Hertz Rental Properties, LLP	Engineer: Ulteig Engineers	
Reason for Request: To plat and rezone the property in conjunction with an industrial development project.		
Location: South of Bismarck, south and west of ND Highway 1804/University Drive and north of 48 th Avenue SE (a replat of Lot 1, Block 1 and Lots 1, 2, 9, 10 and 11, Block 2, Replat of Metro Industrial Park Subdivision and part of the E½ of the SE¼ of Section 22, T138N-R80W/Lincoln Township).		
Project Size: 8.8 acres	Number of Lots: 3 lots in 2 blocks	
EXISTING CONDITIONS:		
Land Use: Vacant/Undeveloped	PROPOSED CONDITIONS:	
Zoning: A – Agriculture MA - Industrial	Zoning: MA – Industrial	
Uses Allowed: A – Agriculture MA – Light industrial, general commercial, warehouses, storage facilities, manufacturing and shop condos	Uses Allowed: MA – Light industrial, general commercial, warehouses, storage facilities, manufacturing and shop condos	
Maximum Density Allowed: A – 1 unit per 40 acres	Maximum Density Allowed: MA – N/A	
PROPERTY HISTORY:		
Zoned: 08/2003 (Portion)	Platted: 08/2003 (Portion)	Annexed: N/A
FINDINGS:		
<ol style="list-style-type: none"> 1. The proposed zoning change would be consistent with the Future Land Use Plan (FLUP) of the 2014 Growth Management Plan, which identifies this area as industrial. 2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include the Bismarck Municipal Airport to the north and northeast, undeveloped A-Agriculture zoned property to the northwest and west, and light industrial uses to the east and south. 3. The proposed subdivision would be served by South Central Regional Water District; therefore the proposed zoning change would not place an undue burden on public services. 4. The proposed zoning change would not have an adverse impact on property in the vicinity. 		
<i>(continued)</i>		

5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and acceptable planning practice.

RECOMMENDATION:

The Planning & Zoning Commission held a public hearing on this request on Wednesday, April 29, 2015, and based on the above findings, recommended approval of the zoning change for Metro Industrial Park Third Subdivision from the A – Agriculture and MA – Industrial zoning districts to the MA – Industrial zoning district.

/JW

Proposed Plat Metro Industrial Park Third Subdivision



March 5, 2015 (hlb)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

0 270 540 1080 Feet



Metro Industrial Park 3rd Subdivision - Zoning Change



ITEM

#13



May 20, 2015

MEMORANDUM

To: Keith Hunke
Assistant City Administrator

From: Mel J. Bullinger, P.E.
City Engineer

A handwritten signature in blue ink, appearing to read "MJB", is written over the name "Mel J. Bullinger, P.E." in the "From:" field.

**Re: AGENDA ITEM (SI 15-495)
Resolution Receiving Bids
Request for Public Hearing on Resolution of Necessity
Request for Resolution Awarding Contract for Construction**

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, May 26, 2015, at 5:15 p.m. in the Tom Baker Room.

Two units of streets have been selected for concrete pavement repair. Letters were not sent to parcel owners. Resolution of Necessity was published in the Bismarck Tribune with the protest period ending on May 19, 2015.

Unit No. 1

19th Street - I-94 Overpass to Century Avenue

Unit No. 2

26th Street - Rock Island Place to Main Avenue

Public Hearing and Award:

May 26, 2015

MJB/ps

Enc.

cc: Jeff Heintz, Service Operations Director
Cora Bauer, Special Assessment Coordinator
Fiscal Services

Melvin J. Bullinger, P.E., City Engineer

Phone: 701-355-1505 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503

ITEM

#14



Engineering Department

May 20, 2015

MEMORANDUM

To: Keith Hunke
Assistant City Administrator

From: Mel J. Bullinger, P.E.
City Engineer

**Re: AGENDA ITEM (SI 15-488)
Resolution Receiving Bids
Request for Resolution Awarding Contract for Construction**

Please schedule the following for consideration by the Board of City Commissioners at its meeting to be held on Tuesday, May 26, 2015, at 5:15 p.m. in the Tom Baker Room.

Street Improvement District No. 15-488 consists of one unit of petitioned street improvements for new concrete pavement, curb and gutter, ADA ramps, and related items. The work will be funded through special assessments and developer prepayments.

Unit No. 1 - Petitioned by 59.44% of Property Owners
Midwest Drive - Main Avenue to 400' south of Tandem Drive
Tandem Drive - Midwest Drive to 52nd Street
Transport Drive - Midwest Drive to Tandem Drive

Award:

May 26, 2015

MJB/ps
Enc.

cc: Jeff Heintz, Service Operations Director
Cora Bauer, Special Assessment Coordinator
Fiscal Services

Melvin J. Bullinger, P.E., City Engineer

Phone: 701-355-1505 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503

ITEM

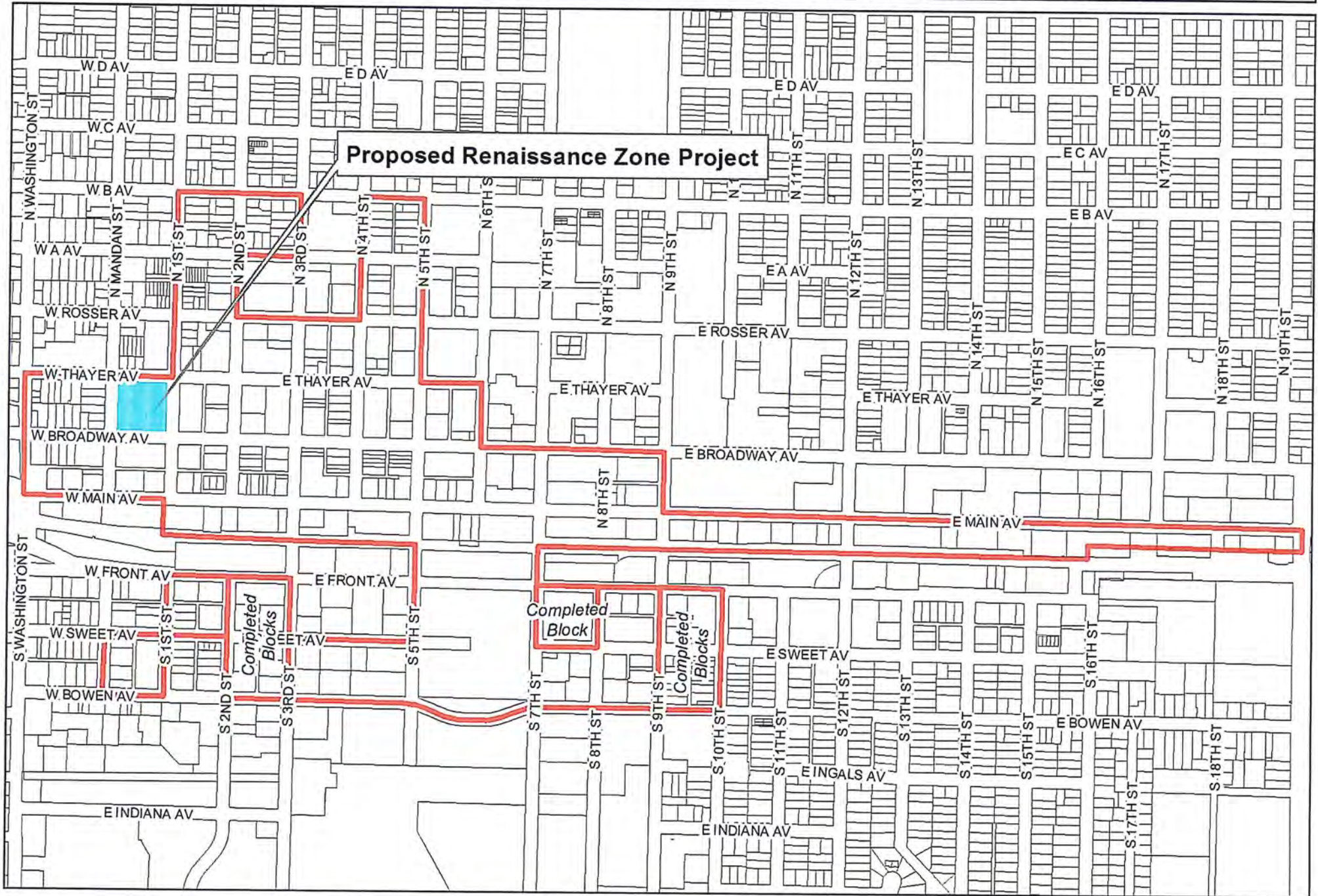
#15

BISMARCK RENAISSANCE ZONE AUTHORITY STAFF REPORT

BACKGROUND:		
Title: Rick and Lori Lee – Purchase of a Primary Residential Condominium		
Status: Board of City Commissioners	Date: May 26, 2015	
Street Address: 100 West Broadway Avenue Unit 318	Legal Description: Lots 1-24, Block 58, Original Plat	
Project Type: Purchase of Primary Residential Condominium	Renaissance Zone Block Number: Block 2B	
Applicants: Rick and Lori Lee	Owner: Pine Properties, LLC	
Project Description: The applicants will be purchasing a 2,160 square foot condominium located in the Broadway Centre building and will use the condominium as their primary residence.		
PROJECT INFORMATION:		
Parcel Size: 90,000 square feet	Condominium Floor Area: 2,160 SF + Patio	Certificate of Good Standing: Received
2014 Property Taxes: \$5,600 (Estimate)	Estimated Property Tax Benefit: \$24,000 over 5 years (100%)	Estimated Income Tax Benefit: \$30,000 over 5 years
PROJECT REVIEW GUIDELINES:		
High Priority Land Use: Yes – residential	Targeted Area: Yes – vacant space	Public Space/Design: N/A
Capital Investment: N/A	New/Expanding Business: N/A	Historic Property: No – outside historic district
FINDINGS:		
<ol style="list-style-type: none"> 1. The proposed use is consistent with the City’s Renaissance Zone Development Plan. 2. The building in which the condominium is located was previously designated as a purchase with new construction Renaissance Zone project (Project 80-B). 3. In addition to the traditional property tax exemption, an individual taxpayer who purchases or rehabilitates a single-family residential property for the individual’s primary place of residence as a Zone project is exempt from up to \$10,000 of personal state income tax liability for five taxable years beginning with the date of occupancy or completion of rehabilitation. 		
RECOMMENDATION:		
<p>The Renaissance Zone Authority held a public hearing on May 19, 2015, and based on the above findings, recommends approval of the designation of the purchase of a primary residential condominium in the building at 100 West Broadway Avenue by Rick and Lori Lee as a Renaissance Zone project, a 100% property tax exemption on the value of the condominium and an exemption up to \$10,000 from personal state income tax for five years beginning with the date of occupancy.</p>		

PROJECT INFORMATION:			
Title: Rick and Lori Lee		Project Type: Purchase of a primary residence condominium	
Current Valuation: \$475,000 (condominium only)		Proposed Investment: N/A	
MINIMUM CRITERIA:		Possible Points	Staff Rating
Proposals Involving a Purchase with Improvements:			
1	Use consistent with the Renaissance Zone Development Plan Specific goals: A1, A2, A3, C1, G1, G3, & G4	20	20
2	Significant level of investment based on guidelines for residential projects	20	20
Subtotal		40	40
PROJECT REVIEW GUIDELINES - REQUIRED:			
1	High Priority Land Use <ul style="list-style-type: none"> Primary sector business Active commercial, specialty retail and/or destination commercial Mixed use development Residential units, including single or multi-family units 	15	15
2	Capital Investment <ul style="list-style-type: none"> Consideration for level of capital investment 	15	15
3	Targeted Area <ul style="list-style-type: none"> Parcels that have been vacant or underutilized for an extended period Parcels specifically targeted for clearance 	15	15
4	Relocation (vs. New or Expanding Business) <ul style="list-style-type: none"> Relocation from within the downtown area (may not be eligible) Relocation from a community outside Bismarck area (may not be eligible) Maintaining existing business in the downtown area or expanding business 	15	0
Subtotal		60	45
TOTAL		100	100
PROJECT REVIEW GUIDELINES – OPTIONAL:			
1	Public Space/Design <ul style="list-style-type: none"> Incorporation of civic or public spaces Demonstrated commitment to strengthen pedestrian connections Attention to streetscape amenities and landscaping Attention to design and visual appearance 	10	0
2	Historic Preservation and Renovation <ul style="list-style-type: none"> Within the downtown historic district Contributing or non-contributing Historic preservation component 	10	0
Additional Optional Points		20	85
TOTAL		120	110

100 West Broadway Avenue - Primary Residential Condominium



City of Bismarck - Community Development Department - Planning Division

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated herein.

0 250 500 1,000 Feet
November 2014



Broadway Centre

Office / Condo Bldg.

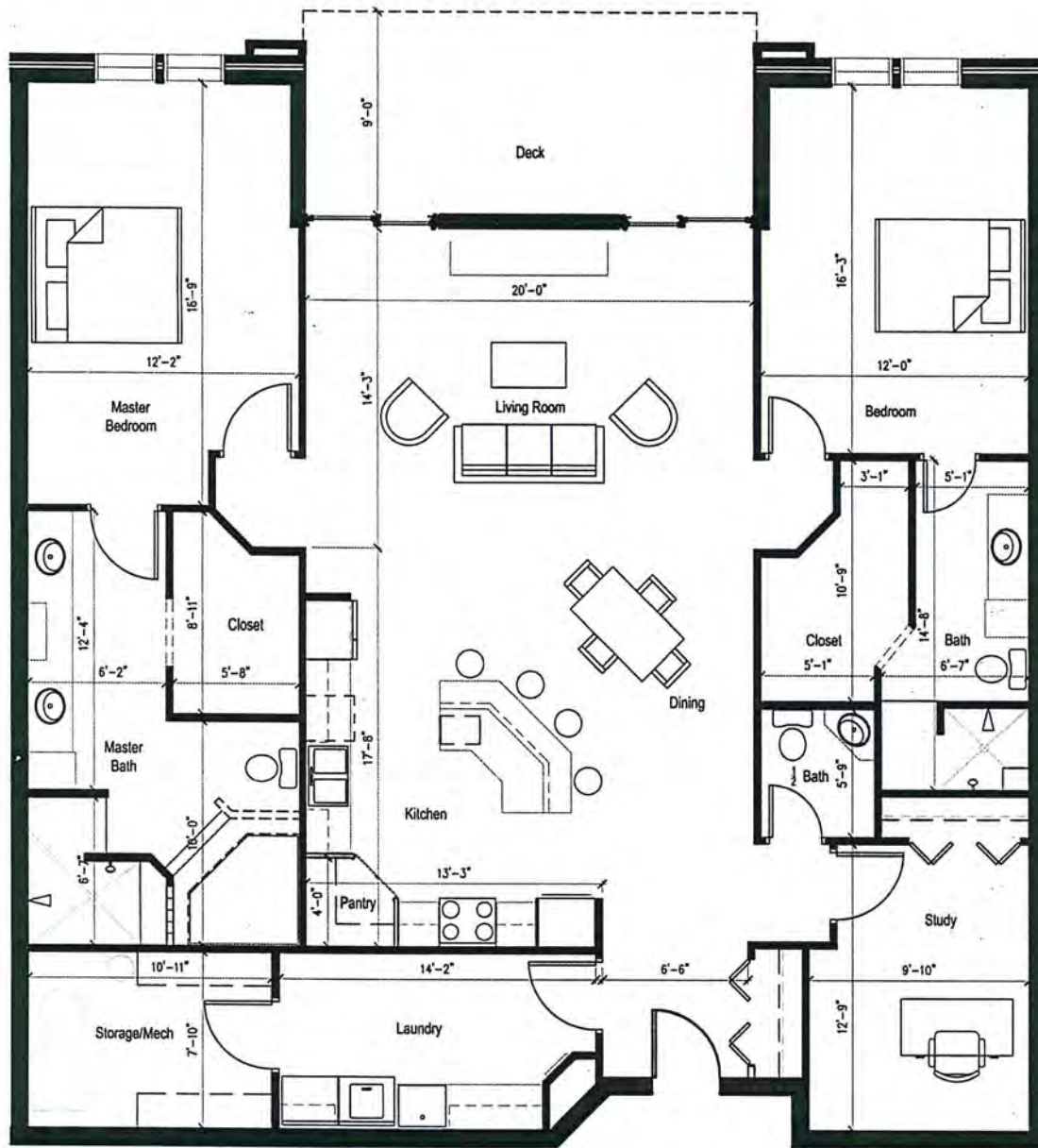
STATE ND

ISSUE DATES

Third Floor Plan

A203





$$\begin{aligned}
 &2087 \text{ sq.ft.} \\
 &+ \\
 &160 \text{ sq.ft. (patio)} \\
 &= \\
 &2247 \text{ sq.ft.}
 \end{aligned}$$

2 Bedroom
Unit

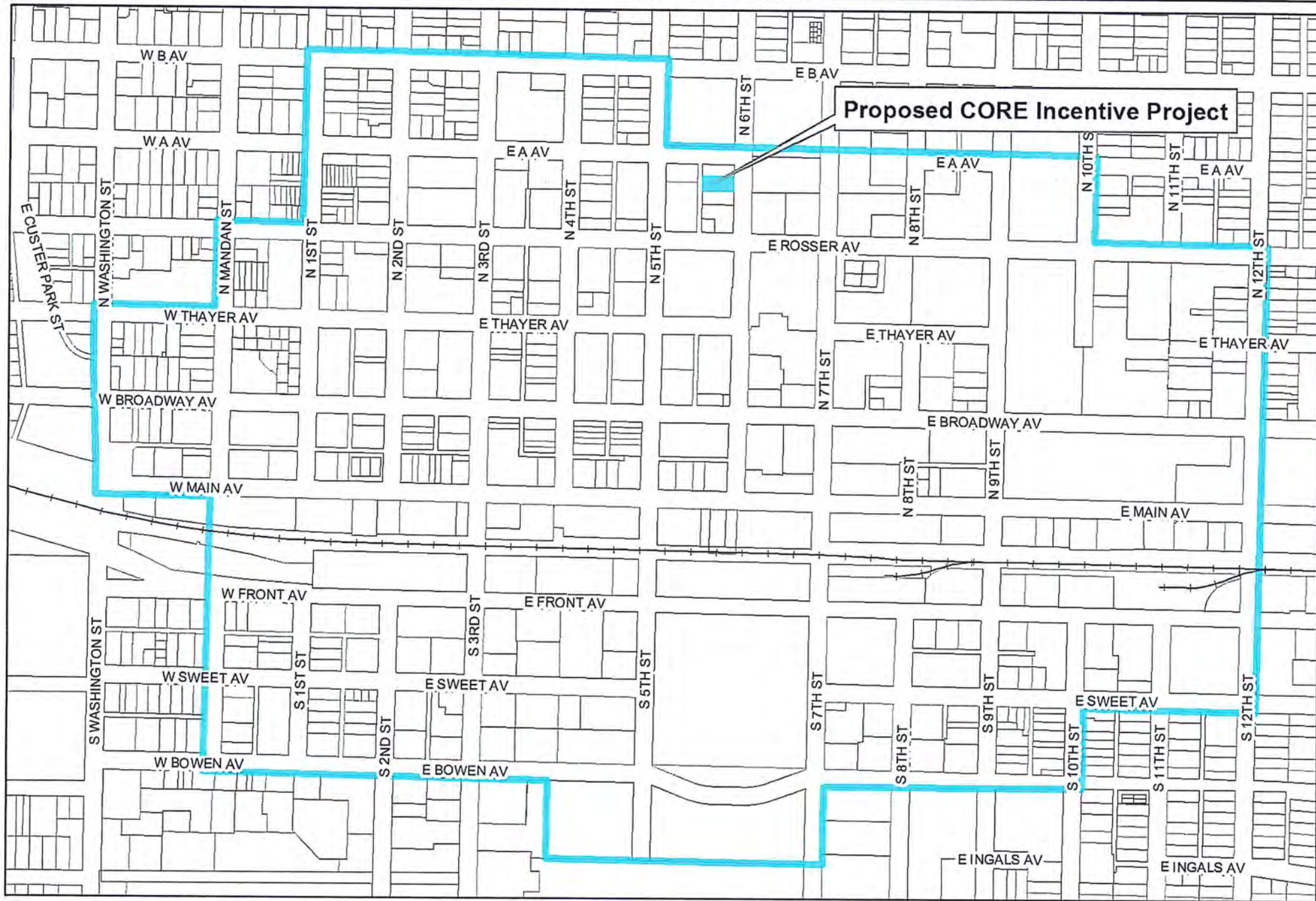
ITEM

#16

**BISMARCK RENAISSANCE ZONE AUTHORITY
STAFF REPORT**

BACKGROUND:		
Title: Canvasback, LLC – CORE Technical Assistance Bank		
Status: Board of City Commissioners	Date: May 26, 2015	
Street Address: 416 North 6 th Street	Legal Description: Lot 2 less the West 10 feet, Block 25, Northern Pacific Addition	
Project Type: CORE Incentive Program	CORE Program: Technical Assistance Bank	
Applicant: Canvasback, LLC/Blake Feil	Owner: Canvasback, LLC	
Project Description: The applicant is requesting assistance from the CORE Technical Assistance Bank to secure architectural and engineering services to design a second floor building addition on a single-story structure.		
PROJECT INFORMATION:		
Parcel Size: 9,026 square feet	Building Floor Area: 3,560 square feet	Lease Area: N/A
Total Project Cost: N/A	Contractor: N/A	Incentive Grant Requested: Up to \$2,475 (architectural) Up to \$5,775 (engineering)
FINDINGS:		
<ol style="list-style-type: none"> 1. The building is located within the Downtown Tax Increment Financing District. 2. Technical Assistance Bank grant funds may be used to secure professional architectural and engineering services to assist with feasibility studies, the preliminary review and design assistance, renovation vs. restoration opinions, renovation for reuse studies, site selection assistance, preliminary cost estimates, code analysis, landscape improvements and graphic design. The grant amount for an architect is limited to 30 hours of work with a rate of \$110.00 per hour, and a total dollar amount not to exceed \$3,300. The grant amount for engineering services is limited to 70 hours of work with a rate of \$110.00 per hour, and a total dollar amount not to exceed \$5,775. Applicants will be responsible for a 25% matching contribution; the total grant amount for architectural services shall not exceed \$2,475 and the total dollar amount for engineering services shall not exceed \$5,775. At this time the finite dollar amount has not been established due to the fact that design work will not commence until the final approval from the Board of City Commissioners has been received. 		
RECOMMENDATION:		
<p>The Renaissance Zone Authority held a public hearing on May 19, 2015, and based on the above findings, recommends approval of the request for a Technical Assistance Bank grant, which would allow the applicant to procure the services of a licensed architect from the CORE Technical Assistance Bank to assist with exterior façade improvements, design, drafting and other architectural services and a licensed engineer from the CORE Technical Assistance Bank to assist with structural, mechanical and electrical aspects. The maximum architectural grant amount of \$2,475.00 is based on an hourly rate of \$110.00 for a maximum of 30 hours and a 25% match provided by the applicant. The maximum engineering grant amount of \$5,775 is based on an hourly rate of \$110.00 for a maximum of 70 hours and a 25% match provided by the applicant.</p>		

Proposed CORE Incentive Programs Project - 416 North 6th Street



City of Bismarck - Community Development Department - Planning Division

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0 250 500 1,000 Feet

May 2015



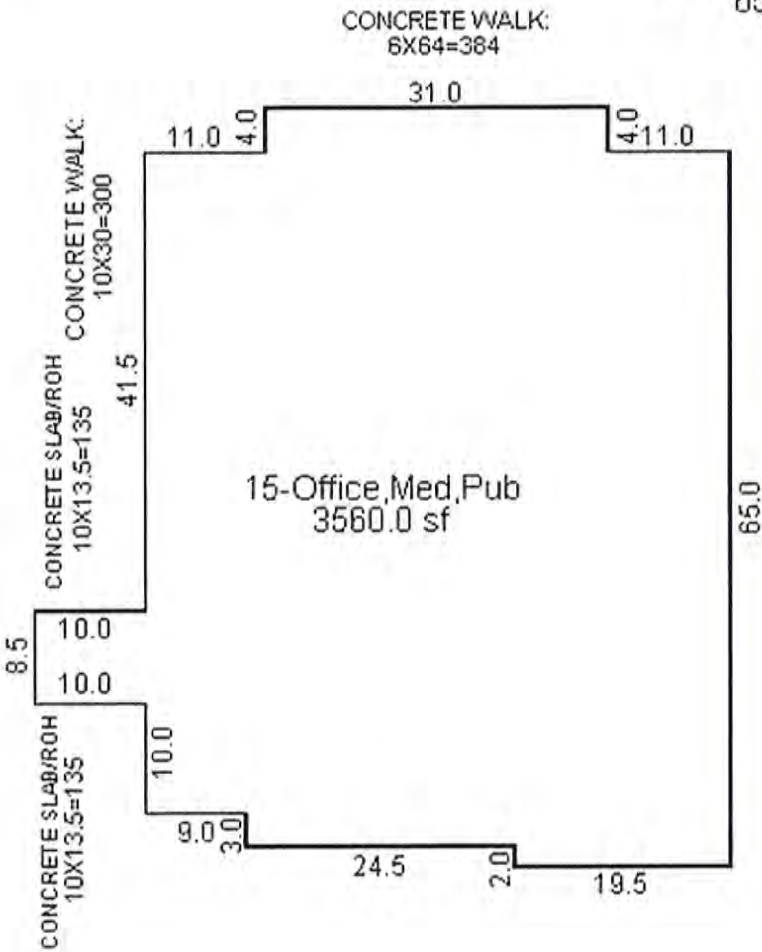




020-025-010

416 NORTH 6TH STREET

CONCRETE PARKING
65X64=4160



ITEM

#17

Bismarck

Department of Public Works

MEMORANDUM

TO: Keith Hunke – Assistant City Administrator

FROM: Jeff Heintz – Public Works Service Operations Director



DATE: May 21, 2015

RE: Agenda Item – Request permission to award sale of a 2010 Toro Mower from a sealed bid public sale

Please place on the May 26th, 2015 Board of City Commissioner meeting regular agenda the request to award the sale of a 2010 Toro Mower from a sealed bid public sale.

City ordinance 7-01-05 outlines the requirements for the sale or disposal of real or personal property. Since the equipment is valued at more than \$10,000, the ordinance requires the use of a sealed bid public sale. A notice containing a description of the property to be sold and designating the place where and the day and hour when the sale was held was published in the official newspaper before the date of the sale as outlined in the ordinance.

Bids will be opened on May 26th at 4 PM prior to the City Commission meeting and a bid tab will be provided at each commissioner workstation prior to the meeting.

I will be present at the City Commission meeting to respond to questions the Board may have regarding this matter. Please contact me if you have questions or require additional information.

ITEM

#18

MEMORANDUM

DATE: May 19, 2015

TO: Mayor Mike Seminary
Commissioner Parrell Grossman
Commissioner Josh Askvig
Commissioner Nancy Guy
Commissioner Steve Marquardt

FROM: Greg Haug, Airport Manager



RE: Regular Agenda Items for May 26, 2015 City Commission Meeting.

The Airport has placed two items on your regular agenda; receive and consider bids for Airport Security Services and to approve an insurance consultant selection committee recommendation.

The first item is to receive and consider bids for Airport Security Services. Bismarck Airport meets security program requirements by the use of armed security guards. Bismarck Airport has used contract armed security for more than 20 years and the last time we bid security services was in 2010. The current contract will end on January 31, 2016.

The successful proposer will sign a contract to provide armed security guards meeting bid requirements (Enclosure 1) starting February 1, 2016 for two years and eight months. The contract covers security services for shifts that total about 30 hours per day. Cost recovery for these services comes from the Transportation Security Administration (TSA) and the airlines. The security service contract is contingent on the Airport/City receiving TSA and airline funding.

Bids were opened on May 18, 2014 at 4 PM. Airport staff conducted due diligence checks of the apparent low bidder subsequent to the bid opening. The bid tab is at Enclosure 1 and shows the hourly rate and calculates the estimated cost of the contract to determine a low bidder. Based on the bid results and due diligence checks, Airport Staff recommends the Board award to the low bidder Bismarck Mandan Security (Enclosure 1) at a total cost of \$684,123.30 and approve entering into the contract at Enclosure 2.

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The second item is to approve an insurance consultant selection committee recommendation. Bismarck Airport conducted an insurance consultant selection process between March 26 and May 18, 2015 to select an airport insurance consultant for up to five years. The insurance consultant selection process was conducted in conformance with the City consultant selection policy.

Between May 1, 2015 and May 18, 2015 the selection committee consisting of Commissioner Josh Askvig, Airport Manager Greg Haug, City Attorney Charlie Whitman, Assistant Airport Marketing and Operations Manager, Matthew Remyne and North Dakota State Fire and Tornado Fund Program Director Jeff Bitz considered written proposals from the single proposer Arthur J. Gallagher & Co. The committee then selected Arthur J. Gallagher & Co. to recommend to the Board of City Commissioners. I want to note that the single proposer is the incumbent. Arthur J. Gallagher & Co. is in its fifth year of our preceding five year selection operating formerly under the name NationAir. They have provided very good service to Bismarck Airport during that period.

The consultant work would be multiyear (for up to five years) beginning March 1, 2016 and would include:

- Providing advice to Airport staff on insurance matters
- Providing an Airport Liability Policy
- Providing Airport Environmental Insurance
- Coordinating Airport vehicle/equipment insurance with North Dakota Insurance Reserve Fund (NDIRF)
- Providing claims support and other miscellaneous insurance services needed by Airport staff

Airport staff asks that the Board of City Commissioners accept and approve the airport insurance consultant selection committee's recommendation of Arthur J. Gallagher & Co.

As always, I am available to answer any questions you may have at 701-355-1808.

Enclosures:

1. Airport Security bid tab
2. Airport Security contract

CALCULATION SHEET
BID FOR AIRPORT SECURITY SERVICES
5/15/2015

Bidder Name	Calculation	Subtotal	3 Year Bid Total
Bis-Man Security Inc.	Year 1 Bid <u> \$22.08 </u> per hour x 30 hours per day x 242 days =	\$160,300.80	\$648,123.30
	Year 2 Bid <u> \$21.95 </u> per hour x 30 hours per day x 365 days =	\$240,352.50	
	Year 3 Bid <u> \$22.60 </u> per hour x 30 hours per day x 365 days =	\$247,470.00	
G4S Secure Solutions USA	Year 1 Bid <u> \$30.20 </u> per hour x 30 hours per day x 242 days =	\$219,252.00	\$892,458.00
	Year 2 Bid <u> \$30.55 </u> per hour x 30 hours per day x 365 days =	\$334,522.50	
	Year 3 Bid <u> \$30.93 </u> per hour x 30 hours per day x 365 days =	\$338,683.50	

AIRPORT SECURITY SERVICES

Concession Agreement, made and entered into by and between the City of Bismarck, a municipal corporation acting through its Board of City Commissioners, hereinafter, the "City", and _____, a corporation authorized to do business in the State of North Dakota, having its principal offices at _____, hereinafter, "Contractor". Contractor's Federal Identification Number is _____.

WITNESSETH:

WHEREAS, the City is the owner and operator of the premises known as the Bismarck Airport located in Bismarck, North Dakota, hereinafter, the "Airport";

WHEREAS, the Airport requires security services as part of a Transportation Security Administration approved Airport Security Program.

WHEREAS, the City desires to contract for the profession management and operation of the Airport's Security Services for the safety of airport passengers and the general public utilizing the Airport and issued a Request for Bids, dated _____, for that purpose.

WHEREAS, the Contractor submitted a Bid to the City dated _____, hereinafter, the "Bid" in response to the City's Request for Bids for the management and operation of Airport Security Services.

WHEREAS, the City and the Contractor have agreed upon the terms and conditions for the professional management and operation of said Airport Security Services pursuant to the Contractor's Bid.

NOW THEREFORE, in consideration of the terms, conditions and covenants hereinafter set forth, the parties agree as follows:

1. **TERM**

- A. The term of this Agreement shall be for a period of two (2) years eight (8) months, commencing on February 1, 2016, and expiring on September 30, 2018, unless sooner extended or terminated, as hereinafter provided.

B. The City hereby reserves to itself the right to extend the term of this Agreement for up to two additional years, if it determines that it is in the best interests of the City to do so and if the Contractor is in compliance with all the terms and conditions of the Agreement.

C. Term is subject to continued airline reimbursement funding and federal grant funding.

2. **SCOPE OF SERVICES AND REQUIREMENTS TO BE PERFORMED BY THE CONTRACTOR**

Law enforcement functions are specifically excluded from this contract. Such functions will be performed by police officers of the Bismarck Police Department or other agencies having the required credentials for performing law enforcement services within the jurisdiction of the Airport. In the course of undertaking the services, requirements and responsibilities of this Agreement, the Contractor shall:

A. Be licensed to conduct business in the State of North Dakota.

B. Commit to and have fully implemented by February 1, 2016, the Airport Security Services and Airport Technical Support Services as described in this Agreement.

C. Provide trained personnel who:

1. Shall meet the requirements under 49 USC 1542 entitled, "Airport Security", the Airport Security Program, and all applicable TSA Regulations and Advisory Circulars as they now exist or may be hereinafter amended are made a part of the training requirement of this Agreement;
2. Are trained by the Contractor commensurate with the requirements of this Agreement, throughout the term of this Agreement;
3. Are licensed by the State of North Dakota Private Investigation and Security Board as "commissioned officers" and an "armed private security" officers;

4. Are certified by Tasers International, or a City approved trainer, to carry a dual purpose taser. A dual purpose taser shall mean a taser with the capability to be applied by a firing mechanism or a dry stun gun.
 5. Are Red Cross certified as “first responders”.
 6. Have a valid North Dakota Drivers Licenses.
- D. Operate all City-owned vehicles in accordance with FAA and Airport Certification Manual Requirements for the Airport. The Contractor shall perform all vehicle maintenance except that above the operator level, as specified in the vehicle owner’s manual. Contractor shall also coordinate all higher levels of vehicle maintenance with the Airport Maintenance Supervisor. In the event that a vehicle is taken out of service, the Airport Manager or his/her designee shall be notified immediately. The Contractor shall develop and maintain a maintenance checklist for each vehicle. This checklist will meet the manufacturer’s requirements for service for each specific piece of apparatus. A regular program of washing and cleaning vehicles and equipment shall be made and included in the service checklist. Contractor shall also be responsible, at no cost to the City, for all damage to Airport vehicles and equipment resulting from errors in operator maintenance or operator error.
- E. Be knowledgeable of requirements of the Airport Security Program.
- F. Qualify all of its personnel for “unescorted access” pursuant to 49 USC 1542 and the Airport Security Program.
- G. Be knowledgeable of requirements of Airport Certification Manual/Emergency Plan.
- H. Assist the Airport Manager or his/her designee in Emergency Planning and Coordination of TSA and FAA required annual and tri-annual exercises.
- I. Provide information to local agencies and the public about Airport Services.
- J. Provide operational and safety patrols.

- K. Make management personnel available to the City within 24 hours, upon notice by City.
- L. Provide adequate staffing of uniformed professionals trained and disciplined to perform their duties in an efficient manner.
- M. Provide staff for up to two armed security guards twenty-four (24) hours a day, seven (7) days a week, if required.
- N. Comply with the records requirements enumerated in Exhibit A hereto.
- O. Operate and maintain the security office (if provided) and equipment provided hereunder and keep the same and the improvements installed thereon in good order, condition and repair including the daily removal of all trash and debris. Coordinate higher level maintenance of building and vehicles with Airport Maintenance Manager.
- P. Obtain, at its sole expense, all licenses and permits necessary for its operations under the Airport Security Service Agreement. All operations shall be in strict conformity with all applicable Federal, state and municipal laws, rules and regulations.
- Q. Control the conduct and demeanor of its agents and employees and, upon objection from the City concerning the misconduct or demeanor of any such person, the Contractor shall immediately take all lawful steps to remove the cause of the objection.
- R. Supply and require its employees to wear suitable uniform attire at all times while on duty and to wear and display badges or other suitable means of identification, which shall be subject to prior and continuing approval of the City.
- S. Faithfully submit the reports of its operations under this Agreement.
- T. Provide two (2) shift positions per day, one fifteen-hour shift, hereinafter the "TSA shift" and a second fifteen-hour shift hereinafter the "airport shift". The TSA shift shall start at 0330 hours daily and end at 1830 hours daily. The airport shift shall start at 0700 hours until 1700 hours and 1930 hours – 0030 hours daily. Both shifts shall be accounted and invoiced separately in accordance with Exhibit B. These shift requirements are subject to change.

- U. Provide up to four (4) additional personnel on two-hour's notice in the event of an emergency or other special circumstance.

3. **CONTRACTOR SECURITY MANAGEMENT PLAN**

Contractor shall establish and maintain a Contractor Security Management Plan, the "Plan", to describe the methods of compliance with this Agreement. At the time of the award of this Agreement, the Contractor shall submit a final Plan for the City to review and approve. Proposed changes to the Plan during the term of the Agreement are to be transmitted to the Airport Manager for review and approval, as appropriate. The Plan shall include, but not be limited to, the following:

- A. Management and Personnel Policies - i.e. hiring, salary structure, promotional practices, benefit packages, leave request, and disciplinary procedures.
- B. Assignments – Descriptions and schedule.
- C. Emergency Response Procedures – A detailed description of standard operating procedures for emergency response and implementation.
- D. Training – A description of all initial and periodic training received by Contractor's personnel, including examples of exams verifying knowledge of necessary elements of security practices.
- E. Reports – Copies of all reports utilized by Contractor for compliance and assignment documentation.
- F. Equipment – A description of equipment that Contractor may provide and its operational usage.
- G. Inspections – Contractor shall identify an inspection system covering all Agreement requirements and services as identified herein and related contractual documents. This system shall stipulate scheduled and unscheduled inspections, how often and in what manner the inspections will be accomplished, the name and rank of personnel who will

perform the inspections, recording method and quality assurance program. Contractor shall develop standard operating inspection procedures of equipment and safety devices.

- H. Corrective Action Procedures – Procedures which will be used by the Contractor to respond to, and correct, deficiencies in service which have been identified by the Airport Manager.
- I. Any and all electronic documents and manuals developed in the course of the Plan shall become the property of the City.

4. **CONTRACTOR RESPONSIBILITIES**

- A. The Contractor shall perform under this Agreement in accordance with the highest standards and shall observe and comply with any and all requirements of the duly constituted public authorities and with all Federal, state, or local statutes, ordinances, regulations and standards including, but not limited to, rules regulations promulgated from time to time by City applicable to the Contractor and the operation of the Airport.
- B. The Contractor shall respond to security incidents within the Airport boundary and render assistance to the City Police Department upon their arrival provided that such response does not in any way interfere with the capability to provide the security services required by this Agreement.
- C. The Contractor shall develop reporting forms, such as training records, log books and all other records relating to security functions. These records are to be kept on the Airport and made readily available for inspection by the Airport Manager or his/her designee and the TSA. The reports shall include all accidents, incidents, safety inspections and any safety violations related to security activities occurring at the Airport. The Contractor shall ensure that complete and proper reports are submitted, as required, to the Airport Manager or his/her designee.

- D. All personnel shall be employees of the Contractor and Contractor shall pay all salaries, benefits, Social Security taxes, Federal and state unemployment insurance, workers compensation and any and all other taxes relating to such employees.
- E. The City reserves the right at all times to inspect and audit the Contractor's records and performance hereunder.
- F. All radios installed in the apparatus and buildings shall be used only in accordance with rules and regulations issued by the TSA, FAA, the Federal Communications Commission and the Airport Manager or his/her designee.
- G. The Contractor shall remove any employee from duty whom the Airport Manager or his/her designee deems not to be properly trained or who is in any way deficient or delinquent in any of the terms and conditions of this Agreement. Upon such removal, the Contractor shall replace the removed employee with another qualified person. At no time shall the staffing level be allowed to go below the required level.
- H. No airport security personnel shall report for duty while under the influence of alcohol or controlled substances.
- I. The Contractor shall furnish, store and control all necessary material, supplies, equipment and apparatus (i.e. janitorial supplies, paper supplies, office supplies, televisions, video cassettes recorders, additional or replacement mobile and portable radios, projectors, etc.) to satisfactorily perform the security services.
- J. If a security office is provided, the Contractor shall provide and maintain, as necessary, a telephone system and service with voice mail capability and shall be responsible for providing said service to all phone lines within the security office. Said telephone shall be approved by the Airport Manager or his/her designee and shall be compatible with the existing Airport telephone system.
- K. The Contractor shall respond to security emergencies which occur on the Airport or adjacent to the boundaries including, but not limited to the following:

1. Emergencies/Incidents
 2. Fire
 3. Haz-mat or bio-haz-mat spillage
 4. All alarms
- L. The Contractor shall further respond as directed by the Airport Manager or his/her designee to any situation or event the Manager may designate.
- M. The Contractor shall regularly and routinely inspect Airport premises from the standpoint of security or in accordance with 49 USC 1542 and the Airport Security Program and recommend corrective action in writing whenever necessary. Contractor shall document in writing follow-up to ensure corrective action. Contractor shall submit said reports to the Airport Manager or his/her designee.
- N. The Contractor shall inspect the Airport Operations Area, "AOA", at least daily or as designated by the Airport Manager or his/her designee. The inspections shall be done according to the Airport Security Program. Deficiencies shall be reported to the Airport Manager or his/her designee and recorded on the daily log.
- O. At least once a shift or more often at the direction of the Airport Manager or his/her designee, the Contractor shall provide a security patrol of the Airport boundaries and facilities, i.e., the terminal, roads, parking lots, etc. The time of inspection and any deficiencies shall be recorded on the daily log.
- P. The Contractor shall be responsive to the Airport Operations Emergency Plan as it applies to security functions in the following areas including but not limited to:
1. Aircraft Accidents
 2. Personal Injury and Illness
 3. Bomb Threats or Hoax
 4. Disabled Aircraft
 5. Structural Fires
 6. Natural Disasters
 7. Civil Disturbances
 8. Radiation Accident or Nuclear Attack
 9. Hazardous Materials
 10. Mutual Aid Plans

- Q. The Contractor shall assist the Airport Manager or his/her designee in developing mutual aid agreements and the Airport Emergency Plan, as directed by 49 CFR 1542 and FAR Part 139.
- R. The Contractor personnel shall become knowledgeable of the Incident Command System.
- S. The Contractor shall assist in the implementation of Wildlife Hazard Management Plan, as required.
- T. Contractor personnel shall participate in annual hands-on fire extinguisher training conducted by Airport fire personnel.

5. **MAINTENANCE OF SECURITY SERVICES**

Neither Contractor nor its employees shall hinder, delay, limit or suspend the continuity of the Airport's function, operation or service in any manner that would invalidate the Airport Operating Certificate. The Contractor shall not in any manner coerce, intimidate, instigate, endure, sanction, suggest, conspire with, promote, support or participate in any strike, slowdown, mass resignation, mass absenteeism, or any type of concerted work stoppage. In the event any of the above-described actions occur, the Contractor shall be obligated to maintain security services which are the subject of this Agreement.

6. **HOURS OF OPERATION**

The Contractor shall provide security services as herein specified seven (7) days a week, up to twenty-four (24) hours per day, 365 days a year.

7. **CITY PROVIDED FACILITIES AND EQUIPMENT**

The City will furnish the following facilities and equipment with its own resources:

- A. Security Office (at option of Airport).
- B. One security vehicle.
- C. Fuel and Oil.
- D. Existing radios and communications equipment.
- E. Security supplies.

- F. All appliances and utilities required to meet TSA certification requirements. Contractor shall provide telephone service for off-site access, cable TV, AOL or other internet access.

8. **INDEPENDENT CONTRACTOR**

The Contractor shall be an independent Contractor in every respect and not an agent of the City.

The Contractor shall be the sole employer of all security personnel and shall accept full responsibility for all lost or damaged property and injury to persons resulting from the execution of the Agreement as well as for any claims made by or on behalf of the Contractor's agents, servants and employees arising out of their employment or work pertaining to the performance of this Agreement.

9. **INDEMNIFICATION**

- A. The Contractor shall accept the full responsibility for and shall defend, indemnify and save harmless the City of Bismarck, its officials, officers, employees, and agents from all claims for all loss or damage to property and injury to persons caused in any way by the Contractor's operations or activities at or in the vicinity of the Airport, including the acts of its employees or agents as well as for any claims made by or on behalf of the Contractor's agent, servants, and/or employees arising out of their operations or activities at or in the vicinity of the Airport; moreover the Contractor shall at all times defend, indemnify and hold the City, its elected officials, officers, and/or employees harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorney and witness fees, and expenses incident thereto, arising out of or in connection with the execution of performance of this Agreement.

- B. The City shall give the Contractor prompt and reasonable notice of any such claim or action made or filed against it, and shall tender the defense thereof to Contractor. In the event that the Contractor does not settle or compromise such claim, then the Contractor

shall undertake the legal defense of such claim both on behalf of the Contractor and behalf of the City. It is specifically agreed, however, that the City at its own cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, rendered against the City for any cause for which the Contractor is liable hereunder shall be conclusive against the Contractor as to liability and amount upon the expiration of the time for appeal.

C. Any fines levied against the Airport by the TSA or FAA for violation of any applicable Federal regulations or Federal, state and local laws shall be thoroughly investigated by the City. If the fine is levied against the city because of the negligence or error of the Contractor and/or its employees, for any reason, said fines shall be assessed to the Contractor without limitation and shall be paid to Airport in full within thirty (30) calendar days of notice to the Contractor by the City.

D. The City hereby reserves the right to adopt Rules and Regulations not in conflict with Federal rules and regulations pertaining to Airport and aircraft operations, noise, vibrations, fumes, dust and particles. The Contractor hereby agrees to operate in compliance with said Rules and Regulations so adopted and hereby waives any claims, rights, damages or costs of any kind against the City incurred by Contractor in complying with said Rules and Regulations.

10. **INSURANCE**

A. Contractor shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified in Schedule A attached hereto. The insurance shall be placed with companies or underwriters satisfactory to the City and licensed to conduct business in the State of North Dakota. The insurance policy(ies) shall be the standard commercial general liability insurance coverage, covering all operations of the Contractor within the City of Bismarck and shall include, but not by way of limitation, employer's liability, bodily

injury, personal injury, property damage, independent contractors, products liability, automobile and contractual coverage. The City of Bismarck, its elected and appointed officials, agents and employees shall be named as additional insureds with respect to Contractor's activities on and in the vicinity of the Airport.

- B. Contractor shall furnish to the City appropriate certificates of insurance evidencing coverage affected and to be maintained during the term of this Agreement on or before January 15, 2016. The coverage shall not be less than the amounts specified in Schedule A, attached hereto and made a part hereof. Such amounts are subject to periodic adjustments upward by Contractor based on Contractor's own assessment of the risks associated with its operations at the Airport. City shall not, in any event, be liable for any shortfall in Contractor's coverage. The insurance policies shall not be subject to cancellation except after notice to the City by registered mail at least thirty (30) days prior to the date of such cancellation or material change. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written evidence of renewal shall be furnished to the City at least thirty (30) days prior to such expiration.

C. Waiver of Subrogation

1. Contractor, on behalf of its insurers, waives any right of subrogation that such insurers may have against the City arising out of this Agreement.
2. The insurance specified in this Paragraph 10 and Schedule A shall contain a waiver of the right of subrogation against the City and an assignment of statutory lien, if applicable.
3. Any physical damage insurance carried by Contractor on construction equipment, tools, temporary structure and supplied owned or used by Contractor shall provide a waiver of the right of subrogation against the City.

11. **SECURITY OFFICE MAINTENANCE**

- A. No improvements, alterations, or additions shall be made in, to, or upon the security office without the prior written consent of the City, and all such improvements, structures, alterations, additions and work shall be in accordance with any conditions relating thereto then stated in writing by the City.
- B. The City will be responsible for structural repairs, roof, HVAC, doors and exterior walls and all interior repairs, maintenance and minor alterations.
- C. The Contractor will be responsible for painting, light bulb replacement, carpet replacement, plumbing repairs and minor electrical repairs.
- D. The Contractor shall be responsible for the replacement, repair and maintenance of any and all appliances.
- E. Upon expiration or earlier termination of the Agreement, the Contractor shall remove all Contractor-owned appliances from the premises.
- F. The building and immediate area which houses the security equipment shall be maintained in a neat and clean appearance and condition by the Contractor at all times. Trash removal will be the responsibility of the Contractor. Any and all changes, alterations and/or improvements shall be submitted to the Airport Manager or his/her designee for approval prior to the commencement of work.

12. **CARE, CUSTODY AND CONTROL OF SECURITY OFFICE, VEHICLES AND EQUIPMENT**

Except as notes elsewhere in this Agreement, the Contractor shall have the sole responsibility for the care, custody and control of the Airport's security office, vehicles and equipment.

- A. With regard to the security office, the responsibilities of the parties are defined in Article 11 of this Agreement.
- B. With regard to the security vehicles, the Contractor's responsibilities are set forth in Section 2D of this Agreement.

- C. With regard to security equipment and inventory, the “Inventory” (both apparatus and supplies), the Contractor shall sign for the inventory on the date Contractor assumes it security responsibilities for the Airport. Annually thereafter, Contractor shall conduct with the Manager of Airport Operations an inventory of the inventory and document and reconcile any discrepancies. Any discrepancies that cannot be reconciled shall be a charge back to the Contractor.
- D. With regard to the purchase of inventory, the Contractor shall submit to the Airport Manager on the first of each month, its recommendations for the purchase of additional inventory and the reasons therefore. The Airport Manager at his/her sole discretion shall approve or reject the Contractor’s recommendations and shall process the approved recommendations through the City’s purchasing system and deliver such additional inventory to the Contractor.

13. **COMPENSATION**

- A. Pursuant to Contractor’s bid dated _____, which reads as follows:

	Year 1	Year 2	Year 3
Price Per Hour			

*Notes: The rates are quoted for a fixed price per hour.

- B. City’s payments to Contractor shall not exceed the cost per hour times the actual hours work completed.
- C. After each month’s performance of the requisite security services, payment shall be made by the City to the Contractor upon presentation of Contractor’s itemized invoice to the Airport Manager. The invoice shall address line items shown in Exhibit A hereto. The form of Exhibit A may be modified by mutual consent of the parties at any time to any

format satisfactory to both the City and Contractor. Invoices submitted shall be based upon actual expenses incurred, not accruals or budget amounts.

- D. Payments shall be made within thirty (30) days of receipt of Contractor's invoice, subject to any reconciliation required. There shall be no other compensation paid to the Contractor for services provided under this Agreement.

14. **CITY'S OBLIGATIONS, RULES AND REGULATIONS**

- A. Except as herein provided, the City agrees that it will, with reasonable diligence and in a manner consistent with that of a reasonably prudent operator of an airport of comparable size, operate, maintain, develop and keep in good repair and order the Airport and all common use and public appurtenances, facilities and equipment provided by the City. The City agrees that it will operate the Airport in a manner consistent with standards established by the Federal Aviation Administration, or any successor Federal agency exercising similar powers for airports of comparable size and in accordance with rules and regulation of the Federal Aviation Administration and any other governmental agency having jurisdiction thereof.
- B. From time to time, the City may adopt and enforce Rules and Regulations. Contractor agrees to observe and obey any and all such Rules and Regulations and all other Federal, state and municipal rules, regulations and laws and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same.
- C. The City reserves the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such Rules and Regulations and laws.

15. **UTILITIES**

- A. The City shall provide gas and electrical service to the Security Office at no cost to Contractor.

16. **GOVERNMENT RESERVATIONS AND RESTRICTIONS**

The rights and responsibilities granted by this Agreement shall be subject to all enforced reservations and restrictions, including but not limited to, the following:

- A. During the time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the agreement or lease with the Government, shall be suspended.
- B. This Agreement shall be subject to the terms of any Sponsor's Assurances and agreements now required or imposed in the future, between the City and the Federal Aviation Administration or any successor Federal agency.
- C. This Agreement shall be subordinate to the provisions of any existing or future agreement between the United States Government and the City relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. Failure of Contractor to comply with the requirements of any existing or future agreement between the City and the United States Government, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Contractor's rights hereunder.

17. **CITY'S RIGHT OF TERMINATION**

In addition to any conditions as specified herein and all other remedies available to the City, this Agreement shall be subject to termination by the City should any one or more of the following occur:

- A. If Contractor shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or any other similar law or statute of the United States or any state, or government, or consent to the

appointment of a receiver, trustee or liquidator of all or substantially all of the property of the Contractor.

- B. If, by order or decree of a court of competent jurisdiction, Contractor shall be adjudged bankrupt or an order shall be made approving a petition seeking its reorganization, or the readjustment of its indebtedness under the Federal bankruptcy laws or any law or statute of the United States or any state, territory, or possession thereof, or under the law of any other state, nation government; provided, that, if any such judgment or order be stayed or vacated within ninety (90) days after the entry thereof, any notice of cancellation given shall be and become null, void and of no effect.
- C. If, by or pursuant to any order or decree of court or governmental authority, board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Contractor for the benefit of creditors, provided that if such order or decree be stayed or vacated within sixty (60) days after the entry thereof or during such longer period in which Contractor diligently and in good faith contests the same, any notice of cancellation shall be and become null, void and of no effect.
- D. If Contractor shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Agreement, provided that upon the happening of any contingency recited in this Section, Contractor shall be given written notice to correct or cure such default, failure to perform or breach. If, within thirty (30) days from the date of receipt of such notice, the default, breach or complaint shall not have been corrected in a manner satisfactory to the City, then and in such event, the City shall have the right at once to declare this Agreement terminated. The City does, however, reserve the right to extend the time period to correct the default if, in its opinion, due diligence is shown by Contractor in curing the default.

- E. If TSA suspends or terminates the requirement for the provision of security services at the Airport.
- F. If airline reimbursement or federal grant funding is terminated.
- G. If under any of the foregoing provisions of this Article, the City shall have the right to re-enter and take possession of the Security Offices, the City may eject Contractor and remove its property and effects (using reasonable force, if necessary) without any liability therefore; without prejudice to any remedies of the City in the event of default by the Contractor; and without liability for any interruption of the conduct of the affairs of Contractor or those claiming through or under it.

18. **CONTRACTOR'S RIGHT OF TERMINATION**

In addition to all other remedies available to the Contractor, this Agreement shall be subject to termination by Contractor should any one or more of the following occur:

- A. The issuance of any order, rule or regulation by the Department of Homeland Security, the TSA, the U.S. Department of Transportation, the Federal Aviation Administration, or their successor Federal agencies, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport provided, that, none of the foregoing has been initiated, caused or contributed to by the Contractor.
- B. The breach by the City of any covenants, terms or conditions of this Agreement to be kept, performed and observed by the City and the failure to remedy such breach for a period of sixty (60) days after written notice from Contractor of the existence of such a breach.
- C. The assumption by the United States Government or any authorized agent of the same of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Contractor from conducting its business, if such restrictions be continued for a period of ninety (90) days or more.
- D. The inability of Contractor to conduct its business at the Airport in substantially the same manner and to the same extent as theretofore conducted, for a period of at least ninety (90) days, because of (1) any law, or (2) any rule, order, judgment, decree, regulation or other action or non-action of any governmental authority, board, agency or officer having jurisdiction thereof, without fault of the Contractor.

19. **PROHIBITION AGAINST ASSIGNMENT**

The Contractor shall not have the right and/or privilege to sell, assign or transfer this Agreement for the provision of Airport Security Services.

20. **ADVANCES BY THE CITY**

If the Contractor should fail to do anything required to be done under the terms and conditions of this Agreement, the City may, at its sole option and after giving written notice to the Contractor, perform such act on behalf of the Contractor. Upon notification to the Contractor of the cost thereof by the City, the Contractor shall promptly pay the City the amount due.

21. **LEGAL CLAIMS AND ATTORNEY FEES**

- A. Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the conduct of security services at the Airport. The City and Contractor shall each have the right to settle and/or defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. The Contractor is an independent contractor in every respect, and not the agent of the City.
- B. If any legal action is instituted by the parties hereto to enforce this Agreement, or any part thereof, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. Any such legal action shall be commenced and maintained in Burleigh County, North Dakota, regardless of Contractor's residence or place of business.

22. **NON-DISCRIMINATION**

- A. Contractor, for it, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the security services, for a purpose for which a United States Government program or activity is extended. Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation –

Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. Contractor, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

1. No person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Security Services.
2. That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
3. That Contractor shall use the Security Services in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

C. Contractor assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, sex, age, disability or marital status be excluded from participation in any employment activities covered in 14 CFR Part 152, Subpart E. Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart E. Contractor assures that it will require that its covered suborganizations provide assurances to

Contractor that they similarly will undertake affirmative action program and that they will require assurances from their suborganizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.

- D. Contractor agrees to comply with all other State and Federal statutory and constitutional non-discrimination provision. In addition, Contractor agrees to comply with all pertinent provisions of the Contractors with Disabilities Act of 1990, P.L. 101-336, July 26, 1990, 42 USC 12101, et seq.; and all pertinent regulations pursuant thereto. Contractor shall not discriminate in the use of the Security Services or any access thereto if such security services are used as a public accommodation or in connection with a public service. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.
- E. In this connection the City reserves the right to take whatever action it might be entitled by law to take in order to enforce this provision. This provision is to be considered as a covenant on the part of Contractor, a breach of which, continuing after notice by the City to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Agreement and will entitle the City, at its option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.
- F. Contractor shall include the foregoing provisions in every agreement or concession pursuant to which any person or persons, other than Contractor, operates any facility on the security services providing service to the public and shall include thereon a provision granting the City a right to take such action as the United States may direct to enforce such covenant.
- G. Contractor shall indemnify and hold harmless the City from any claims and demands of third persons including the United States of America resulting from Contractor's

noncompliance with any of the provisions of this Section and Contractor shall reimburse the City for any loss or expense incurred by reason of such noncompliance.

23. **PRIOR AND COLLATERAL AGREEMENTS**

This Agreement shall constitute the entire Agreement between the parties and no other stipulation, agreement or understanding, written or oral, expressed or implied of the parties hereto or of their agents, relating to the Agreement and the provision of the security services described herein, shall limit or modify its terms. This Agreement shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, expressed or implied, between the parties for the rights granted herein. This Agreement shall not be subject to modification or change except by written instrument duly signed.

24. **SEVERABILITY**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25. **NON-WAIVER OF BREACH**

The waiving of any of the covenants of this Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by the City to any act by Contractor requiring City's consent shall not be deemed to waive consent to any subsequent similar act by Contractor.

26. **VENUE**

This Agreement is to be construed in accordance with the applicable laws, rules and regulations of the City of Bismarck, the County of Burleigh and the State of North Dakota.

27. **TIME OF ESSENCE**

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

28. **SURRENDER OF POSSESSION**

Upon the expiration of this Agreement or its earlier termination as herein provided, Contractor shall remove all of its personal property from the Airport, unless, at the discretion of the City, this Agreement is renewed or replaced.

29. **APPROVAL OR DIRECTION BY CITY**

Wherever consent, approval or direction by the City is required under this Agreement, such consent, approval or direction by the City shall be effective if given by the Airport's Manager or his/her designee in the manner set forth in this Agreement. Nothing requiring consent, approval or direction from the City shall be unreasonably requested by Contractor nor shall such consent, approval or direction be unreasonably withheld by the City.

30. **NOTICES**

All payments, demands and notices required herein shall be deemed to be properly served if hand-delivered or if sent by certified or registered mail, postage prepaid, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

CITY

AIRPORT MANAGER
BISMARCK AIRPORT
P.O. Box 991
Bismarck, ND 58502

Courier or in person:
AIRPORT MANAGER
BISMARCK AIRPORT
2301 University Drive Bldg 17, Suite 225B
Bismarck, ND 58504

CONTRACTOR

Courier or in person:

The date of service of such notice shall be the date such notice is delivered by hand, courier or is deposited in Post Office of the U.S. Postal service.

31. **PARAGRAPH HEADINGS**

Paragraph headings contained herein are for convenience in reference only, and are not intended to define or limit the scope of any provisions of this Agreement.

32. **ENTIRE AGREEMENT**

- A. This Agreement consists of Articles 1 to 32, inclusive, Schedule A and Exhibits A, B and C.
- B. It constitutes the entire Agreement of the parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and Contractor. The parties agree that no representations or warranties shall be binding upon the City or Contractor unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year
written below.

RECOMMENDED APPROVAL
BY:

Gregory B. Haug
Airport Manager

ATTEST:

William C. Wocken
City Administrator

ATTEST:

APPROVED AS TO FORM AND LEGALITY
TERMS AND CONDITIONS BY:

Charles C. Whitman
City Attorney

CITY OF BISMARCK, ND

Michael C. Seminary
President,
Board of City Commissioners

Date: _____

CONTRACTOR

Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____

**No
attachments
for Regular
Agenda Items
#19A &
#19B**

**No attachment
for Regular
Agenda Item
#20**